

D
0
0
0
0
8
5
4
7
2



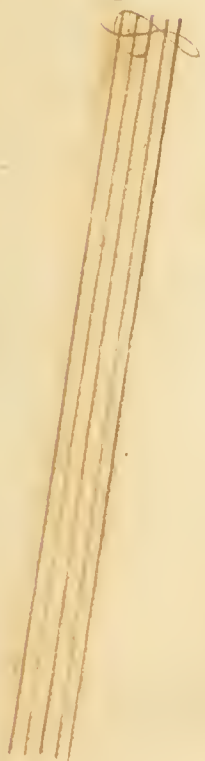
UP SOUTHERN REGIONAL LIBRARY FACILITY



Ex Libris
C. K. OGDEN



Chas. H. Lloyd.



T H E
Law of a Justice of Peace
A N D
PARISH OFFICER:

CONTAINING ALL THE
Acts of Parliament at Large concerning them,
AND THE
CASES determined on those ACTS
IN THE
COURT OF KING'S BENCH.

To which is added
A Collection of PRECEDENTS revised and settled by Persons of Eminence in the Law; and comprising a greater Variety than any other Work of this Kind extant.

B Y
JOHN LORD VISCOUNT DUDLEY AND WARD,
And T. CUNNINGHAM, Esq.

V O L. III.

L O N D O N :
Printed by H. WOODFALL and W. STRAHAN, Law-Printers to the
King's Most Excellent Majesty ;

And Sold by W. GRIFFIN, in Catharine-Street, in the Strand.

MDCC LXIX.

Land-Tax.

THE ancient method of taxation was by escuage, which was on lands held by knight service; and by tallage on the cities and boroughs; and it was made in this manner: When the king wanted money for his wars, those tenants that did not attend him in person, paid him an aid, and the aid was assessed before the justices itinerant. It was generally a gift of all the inhabitants as a body corporate; if they did not give according to the wants of the crown, the justiciar enquired into their behaviour, and if there were any forfeitures of their charters, *quo warranto's* came out, to seize their liberties into the king's hands. But *Ed. 1.* found this way of taxing by escuage and tallage to be very incomplete; because wars were drawn out into great length and expence; and therefore he formed into distinct bodies, the tenants *in capite* that held great baronies, and these were called the *barones majores*, (the now peers of parliament) and the representatives of the *barones minores*, and of several corporations, *viz.* the citizens and burghesses, of whom he made one body; which now composes the house of commons. *Gilb. Treat. of the Excheq. 192.*

King *Edward* the first granted the people *Magna Charta*, which they had long contended for, and also the charter of the forests; and for *Magna Charta* they granted the king a fifteenth, by the name of *Quindecimam partem omnium bonorum*; so that instead of particular assessments in cities and boroughs, there was one universal assessment of the fifteenth of all their substance: this fifteenth seems to have been at first made out of the ecclesiastical tenth; for the popes claimed the tenths of all benefices; it was therefore easy to know, by the pope's collections of his tenths, what was the value of every ecclesiastical benefice, for the pope's tenth was reckoned at 2 *s.* per pound, and therefore the fifteenth must be 1 *s.* 4 *d.* The benefice consisted of the glebe, and the tenth part of the township; therefore by the value of the benefice, deducting the glebe, they knew the true value of the township, and how to set a fifteenth upon it: so that the fifteenth of the townships were certain sums, that were set by the

king's taxors and collectors under the act of parliament; and commissions were granted to the taxors and collectors of them under the great seal; but in collecting of the fifteenths, the sums only appeared in the books below. And the collectors of every township, either returned their collection into the Exchequer, or else there were head collectors for the whole county, who returned it thither; there were likewise commissioners appointed, to supervise such taxation and collections: but about the time of *Edward III.* there were certain established sums set upon every township; and so, as the king's wants increased, they gave one, two, or three fifteenths. *Gillb. Treat. of the Excheq.* 193, 194.

We find in the times of *Henry* the eighth, queen *Elizabeth*, and king *James* the first, that they raised both subsidies and fifteenths: this was, because the value of things increased, and therefore the old fifteenths were not according to the then true value of townships. And therefore they contrived that the subsidy should be raised by a pound-rate upon lands, and likewise a pound rate upon goods; and we find in the subsidy 4 *Car.* (which is said to be the greatest subsidy that ever was given, and which passed upon the petition of rights) there was 4*s.* in the pound laid upon land, and 2*s.* 8*d.* upon goods; now, 4*s.* upon land amounts to three-fifteenths, and 2*s.* 8*d.* which was upon goods to two-fifteenths; but in this they had no regard to the old rates made in the tax-book of the several townships, otherwise than to discover the value of the lands; but a method is chalked out by the act of parliament to appoint commissioners, assessors, and collectors, in order to rate and get in the said subsidy. This was found very inconvenient, because the commissioners used to be favourable to their own country, therefore it was found necessary to revive so far the ancient method, as to appoint a certain sum; and in the time of the civil war, the long parliament would not settle any persons to appoint commissioners, but the appointment of commissioners was made in the act itself: and in this new manner of taxing, they appointed the sum to be levied on each particular county, in the act itself, as well as the commissioners names, and where to levy it: and the six associated counties, *viz. London, Middlesex, Kent, Sussex, Surry, and Hertford*, being not spoiled and pillaged in the civil wars, and more hearty to the parliament interest, were taxed higher than any other counties in *England.* *Gillb. Treat. of the Excheq.* 194, 195, 196.

After the revolution, to support king *William* in his wars with *France*, it was necessary to come into a land-tax, and from 1684 to 1693, the tax was made by a pound-rate, like the former subsidies; but when the people found that the war was like to hold, about 1693, the tax was mightily lessened, every body being willing to ease his neighbour; and then they came to lay a rate upon every county, and the associating counties, being very zealous for the government in the revolution; and having taxed themselves higher than their neighbours in 1693, it was argued that those counties were better able to bear the tax, and therefore in 1693, they laid the disproportioned sums that are now the standard of the land-tax. Let

us

us now compare the subsidy law, 4 *Car.* 1. with the present land-tax, and consider the manner of gathering them. *Gilb. Treat. of the Excheq.* 196, 197.

In the old time, according to the way of making war then used, the tenants *per baroniam*, and by knight-service, as is herein before mentioned, were obliged to be in the camp forty days, at their own expence, and the escuage was levied upon the defaulters; but when the art of war improved, and armies were brought into the field that continued a long time, they made their taxation by way of subsidy; which was so much in the pound upon the personal and real estate; as the subsidy of the fourth of king *Charles* was 2 s. 8 d. *per* pound on the personal, and 4 s. *per* pound on the real estate; and where there were different times of taxation and collecting, they were called so many different subsidies; and the spirituality gave their tax in convocation, and the temporality in parliament; but the convocation-tax always passed both houses of parliament, since it could not bind as a law till it had the consent of the legislature. Their tax was made according to the rate in the king's books, and since a tenth was paid yearly to the crown, they only taxed the other nine parts as they stood in those books. *Gilb. Treat. of the Excheq.* 197, 198.

The temporality and spirituality were taxed in the same manner as to their personal estate, but as to their real estate, what was given in convocation excused their tax *quoad* their spiritualties. The commissioners for executing the act were appointed by the lord chancellor, lord treasurer, or other great officers of the crown, or any two of them, the lord chancellor being one. *Gilb. Treat. of the Excheq.* 198.

The present land-tax, tho' it follows the plan of the subsidies, *viz.* in taxing so much on the personal, and so much on the real estate, yet it differs in two material circumstances, *viz.* that there is a sum imposed on each particular county, and that the commissioners are named in the act itself: this came in in the time of the civil war, in this manner; they had first taxed according to the pound-rate, but when the zeal of the people fell off, they found it necessary to set a sum upon each particular county; and so, they taxed them according to the highest sum that had been levied in such county, and obliged them to make it up; and they being then in opposition to the crown, they named the commissioners in the act itself; and this way of taxing was afterwards followed at the restoration, because they found it for the ease of the crown to name particular sums in the act of parliament, and then they named commissioners also, who were to assess and rate each particular inhabitant. The commissioners by the subsidy, were duly to execute that act; but by the land-tax they were directed in a particular manner how they should do it: that is to say, by making the distribution of the particular sum upon each particular hundred, lathe, and wapentake; but by both laws, they were to subdivide themselves, and the respective commissioners were not to act out of their district. The commissioners by the land-tax are to give a note to the receiver-general, of the names of the acting commissioners, and sums in each division. We do not find this clause in the old subsidy law, because it was not necessary, where there was not a particular sum imposed on each county. The com-

missioners, both in the subsidy and land-tax, were to issue their precepts to the constables and other inhabitants, and to appoint assessors; and by both laws, the commissioners are to give them in charge, to make a just assessment, and to return such assessments to the commissioners; who by the land tax were to return the names of collectors. And by both laws, the persons aggrieved might appeal from the assessors to the commissioners; and also stock upon land is excused from paying as personal estate. *Gilb. Treat. of the Excheq.* 199, 200.

By the subsidy law, the commissioners appointed collectors; but by the land-tax, the assessors brought in the names of the collectors; because the place was answerable for the sums so assessed, until they were paid in to the receiver-general; and therefore it was necessary that the assessors should appoint collectors: but by the subsidy law, there was no particular sum locally fixed; and therefore the collectors were appointed by the commissioners, who acted in behalf of the crown; and the collectors names were returned in, by both laws, to the receiver-general or high collectors; and this disposition was, that the receiver might know in whose hands the money was. In the subsidy, the commissioners appointed the high collectors in each shire and division, to whom the sub-collectors were accountable, and the high collectors were accountants to the Exchequer; and one duplicate of the assessments was given to the high collector, and the other returned into the Exchequer, to be a charge upon the high collectors receipt: but according to the frame of the land-tax, the receiver is now appointed by the lord treasurer; and by this law, a duplicate of each particular division is to be given to the receiver-general, and another to be returned into the Exchequer; the duplicate returned to the receiver, is to charge the collectors, and that returned into the Exchequer, to charge the receiver-general. *Gilb. Treat. of the Excheq.* 200, 201.

The high collectors by the subsidy law, gave security to the commissioners by recognizance, to answer the money by them received; but now, the receiver-general, by the constitution of the treasury gives security to the crown. In the subsidy law and land-tax, the under-collector was to distrain the parties refusing to pay the sum assessed: and by the subsidy law, the under-collectors paid in the money collected to the high collector, who was an accountant at the Exchequer; but by the land tax, the collectors are to pay in the money to the receiver, and he is the accountant at the Exchequer. If the collectors did not pay in the money they had collected, to the receivers, the commissioners were to imprison them, and seize their effects; but if the proportion was not answered, the place itself was answerable, by a re-assessment of the commissioners. By both laws, the collectors had precepts and assessments delivered; and, under such precepts, had authority to distrain the lands and goods of the person so assessed, by virtue of the act. By both laws, the parties were to be taxed for goods, in the place where they dwelt. By both laws the distress was to be sold, and the overplus paid to the owner; by the subsidy law in eight days; by the land-tax, in four days: and for neglect or refusal

fusal to pay, and failure of distress, the party to be imprisoned. By the subsidy law, all the commissioners joined in one certificate; but now the commissioners in each division return their estates, which are a charge upon the receiver-general; but in the land-tax, if a non-payment in any place be certified by the receiver under his hand, Exchequer process is to issue against the acting commissioners. By the land-tax, if land doubly taxed comes into protestant hands, and they get a certificate from the commissioners, and prove the truth of the certificate before the barons, by two credible witnesses, the court of Exchequer is impowered to discharge such sum from the parish or township in which the lands lie, and that discharge is carried to the house of commons, in order to be discharged out of the general sum the next year. *Gilb. Treat. of the Excheq.* 203, 204.

As the Land-Tax Act is renewed annually, and commonly sent to the commissioners, who are generally justices of the peace, it is thought proper not to insert the Act for 1768, in this Work; especially, as that for 1769, will be soon published.

Larceny.

LARCENY, (Fr. *larcin*, Lat. *latrocinium*) is a theft of personal goods or chattels in the owner's absence; and, in respect of the thing stolen, it is either great, or grand, or small: *Grand larceny* is, where the things stolen, tho' severally, exceed the value of 12 *d.* *petit larceny* is when the goods stolen exceed not that value. *Cowell.*

A person who steals the goods of another, let the value of them be never so small, is guilty of felony; but it is said to be no felony for one reduced to extreme necessity to take so much of another's victuals, as will save him from starving; but if such necessity be owing to his unthriftiness, it is far from being an excuse. 1 *Hawk. P. C.* 93.

But here we must observe the difference between grand and petit larceny, which is again divided into simple and mixt larceny. Simple grand larceny is, the felonious and fraudulent taking and carrying away the personal goods of another not from his person, nor out of his house, where the goods are above the value of twelve pence, but if of that value, or under, then it is petit larceny; if from his person, or out of his house, it is called mixt larceny, but hath no greater degree of guilt attending it at common law, than simple larceny; for in both cases, the offender was allowed the benefit of his clergy, but is at this time in several instances excluded by acts of parliament. *S. P. C.* 27. *Crom.* 33. *H. P. C.* 74. 1 *Hawk. P. C.* 97.

If two or more persons together steal goods above the value of 12 *d.* every one of them is guilty of grand larceny, for each person is as much

an

an offender, as if he had committed the fact alone. *S. P. C. 24. Crom. 36. H. P. C. 70.*

Also if one at several times steal several parcels of goods, each under the value of 12*d.* but amounting in the whole to more, from the same person, and be found guilty thereof on the same indictment, he shall have judgment of death as for grand larceny. *S. P. C. 24. Crom. 36. H. P. C. 7. 1 Hawk. P. C. 95.*

If one be indicted for stealing goods to the value of ten shillings, and the jury find specially that he is guilty, but that the goods are worth but ten pence, he shall not have judgment of death, but only as for petit larceny. *1 Hawk. P. C. 95.*

All those who are under a natural disability of distinguishing between good and evil, as infants under the age of discretion, idiots and lunatics, are not punishable by any criminal prosecution whatsoever, and consequently cannot be guilty of felony. *H. P. C. 10. 1 Hawk. P. C. 2.*

Also a feme covert is so much favoured, in respect of that power and authority which her husband has over her, that she shall not suffer any punishment for committing a bare theft in company with, or by coercion of her husband. *Kelyng. 31. S. P. C. 26. 1 Hawk. P. C. 2.*

But if she be guilty of treason, murder or robbery, in company with, or by coercion of her husband, she is punishable as much as if she was sole. *S. P. C. 65. 1 Hawk. P. C. 2.*

Also a feme covert may be guilty of larceny, if she of her own voluntary act, or by the bare command of her husband, steal the goods of a stranger, but not if she steal her husband's, because a husband and wife are considered but as one person in law; and the husband, by endowing his wife at the marriage with all his worldly goods, gives her a kind of interest in them; for which cause, even a stranger cannot commit larceny in taking the goods of the husband by the delivery of the wife, as he may by taking away the wife by force, and against her will, together with the goods of the husband. *S. P. C. 65. 1 Hawk. P. C. 2, 93.*

Statutes concerning Larceny.

STAT. 8 Hen. 6. c. 12. [*A. D. 1429.*] *by which it is provided, among other things, that "no judgment or record shall be reversed for any writ, process, &c."*

Imbezilling
of a record,
whereby any
judgment
shall be re-
versed, is fe-
lony.

8 R. 2. c. 4.
8 Co. 1 Co.
2 Roll, 44.

Stat. 3. "And moreover it is ordained, That if any record, or parcel of the same writ, return, panel, process or warrant of attorney in the king's courts of Chancery, Exchequer, the one bench or the other, or in his Treasury, be willingly stolen, taken away, withdrawn, or avoided by any clerk, or by other person, because whereof any judgment shall be reversed; that such stealer, taker away, withdrawer, or avoider, their procurators, counsellors, and abettors, thereof indicted, and by process thereupon made thereof duly convicted by their own confession, or by inquest to be taken of lawful men, whereof the one half shall be of the men of any court

court of the same courts, and the other half of other, shall be judged for felons, and shall incur the pain of felony. (2.) And that the judges of the said courts, of the one bench or of the other, have power to hear and determine such defaults before them, and thereof to make due punishment as afore is said."

STAT. 21 Hen. 8. c. 7. [A. D. 1529, intituled] "Servants imbezelling their masters goods to the value of forty shillings, or above, shall be punished as felons."

"Where before this time, divers, as well noblemen, as other the king's subjects, have upon confidence and trust delivered unto their servants their caskets, and other jewels, money, goods, and chattels, safely to be kept to the use of their said masters or mistresses, and after such delivery the said servants have withdrawn themselves, and gone away from their said masters or mistresses, with the said caskets, jewels, money, goods, and chattels, or part thereof, to the intent to steal the same, and defraud their said masters or mistresses thereof, and sometime being with their said masters and mistresses, have converted the said jewels, money, and other chattels, or part thereof, to their own use, which misbehaviour so done was doubtful in the common law, whether it were felony or not; and by reason thereof the foresaid servants have been in great boldness to commit such or like offences: (2) Be it therefore enacted, ordained, and established by the king our sovereign lord, by the assent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by authority of the same, That all and singular such servants, to whom any such caskets, jewels, money, goods, or chattels, by his or their masters or mistresses, shall from henceforth so be delivered to keep, that if any such servant or servants withdraw him or them from their said masters and mistresses, and go away with the said caskets, jewels, money, goods, or chattels, or any part thereof, to the intent to steal the same, and defraud his or their said master or mistresses thereof, contrary to the trust and confidence to him or them put by his or their said masters or mistresses, or else being in the service of his said master or mistress, without assent or commandment of his master or mistress, he imbezil the same caskets, jewels, money, goods, or chattels, or any part thereof, or otherwise convert the same to his own use, with like purpose to steal it, that if the said caskets, jewels, money, goods, or chattels, that any such servant shall so go away with, or which he shall imbezil with purpose to steal it, as is afore-said, be of the value of 40*s.* or above, that then the same false, fraudulent, and untrue act or demeanour, from henceforth shall be deemed and adjudged felony; and he or they so offending, to be punished, as other felons be punished for felonies committed, by the course of the common law.

Sec. 2. "Provided alway, that this act, or any thing therein contained, shall not in any wise extend, or be prejudicial to any apprentice or apprentices, or any person within the age of eighteen years, going away with
The statute shall not extend to an apprentice, or with

one within eighteen years of age. 27 Hen. 8. c. 17. 28 H. 8, c. 2. Rep. by 1 Mar. sess. 1. c. 1. and made perpetual by 5 Eliz. c. 10. with his or their masters goods or jewels, or otherwise converting the same to his or their own uses, during the time of their apprenticeship, or being within the age of eighteen years, but that every apprentice or apprentices, such person or persons being within the said age, doing or offending contrary to this present act, shall be and in likewise as they and every of them were before the making of this act; (2) the same act to continue and endure unto the next parliament."

STAT. 1 Ed. 6. c. 12. [*A. D. 1547. Intituled*] "An act for the repeal of certain statutes concerning treasons and felonies."

The offenders in these felonies shall be excluded of their clergy and sanctuary, by 2 & 3 Ed. 6. c. 33. Hob. 294. Persons stealing one horse are ousted of clergy, &c.

Se^{ct}. 10. "And it is further ordained and enacted by the authority afore said, That no person or persons that heretofore hath been, or at any time hereafter shall be, in due form of the laws, attainted or convicted of murder, of malice prepensed; or of poisoning, of malice prepensed; (2) or of breaking of any house by day or by night, any person being then in the same house where the same breaking heretofore hath been, or hereafter shall be committed, and heretofore hath been, or hereafter shall be thereby put in fear or dread; (3) or of, or for robbing of any person or persons in the highway, or near to the highway; or for felonious stealing of horses, geldings or mares; (4) or of felonious taking of any goods out of any parish church, or other church or chapel; (5) or being indicted or appealed of any of the same offences, and thereupon found guilty by verdict of twelve men, or shall confess the same upon his or their arraignment, or will not answer directly, according to the laws of this realm, or shall stand wilfully, or of malice mute, (6) shall not be admitted to have or enjoy the privilege or benefit of his clergy or sanctuary, but shall be put from the same: (7) And that in all other cases of felony, other than such as are before mentioned, all and singular person and persons, which after the first day of March next coming, shall be arraigned or found guilty upon his or their arraignment, or shall not confess the same, or stand mute, in form afore said, or will not answer directly in form above said, shall have and enjoy the privilege and benefit of his or their clergy, the liberty and privilege of sanctuary, in like manner and form, as he or they might or should have done, before the four and twentieth day of April, in the first year of the reign of the said late king Henry the Eighth.

Clergy allowed in all other cases of felony. 1 Jac. 1. c. 25. Sanctuaries extinct. 11 Coke 31.

STAT. 5 & 6 Ed. 6. c. 9. [*A. D. 1552. Intituled*] "An act for the taking away of the benefit of the clergy from certain offenders."

No person robbing any house, &c. shall have the benefit of his clergy. 23 H. 8. c. 1. 3 Inst. 65, 115.

Where at the parliament holden at *Westminster* by prorogation the twenty-third year of the reign of the late king of famous memory, king *Henry* the eighth, it was among other things then and there enacted, established and ordained by authority of the same parliament, That no person or persons, which after that time should happen to be found guilty, after the laws of this realm, for any manner of petty treason, or for any wilful murder of malice prepensed, or for robbing of any churches, chapels, or other

other holy places, or for robbing of any person or persons in their dwelling-houses or dwelling-places, the owner or dweller in the same house, his wife, his children or servants then being within, and put in fear or dread by the same, or for robbing of any person or persons in or near about the high ways, or for wilful burning of any dwelling-houses or barns wherein any grain or corn should happen to be, nor any person or persons being found guilty of any abetment, procurement, maintaining or concealing of any, or to any such petty treason, murders or felonies, should from thenceforth be admitted to the benefit of his or their clergy, but utterly to be excluded thereof, and suffer death in such manner and form as they should have done for any the causes or offences aforesaid, if they were no clerks, such as be within holy orders, that is to say of the orders of subdeacon, or above, all only excepted, as by the same act among other things more plainly appeareth; (2) which act was made to endure until the last day of the next parliament; and after that, at the session of the parliament holden at *Westminster* by prorogation in the thirty-second year of the reign of the said late king, the same act with other acts was made to continue for ever. Kelyng 67, 68, 69. 32 H. 8. c. 3.

Stat. 2. "Sithen the making of which statute it hath been doubted, that if such robberies and felonies have been committed and done in dwelling-houses and dwelling-places, the owner or dweller in the same house, his wife, his children or servants being then put in fear or dread by the same, shall not lose the benefit of their clergy, if the offenders therein be found guilty by the laws of this realm, unless the same robbery or felony be committed and done in the very chamber, house or place where the owner or dweller in the same house, his wife, children or servants shall happen to be or lie at the time of such robbery and felony committed and done, and put in fear and dread, although the owner and dweller in such house and houses, his wife, his children or servants, at the time of such robbery and felony committed and done, were or lay in other places within the precinct of the same dwelling-houses, nigh unto the house or place where such robbery and felony shall happen to be done: (2) Or if it happen that the owner or dweller within the same house where such robbery and felony shall happen to be done, his wife, children or servants to be asleep at the time of such robbery and felony committed and done, although the same robbery were done in the chamber or place where the owner or dweller in the same house, his wife, children or servants then lay, the offenders being found guilty thereof, according to the laws of the land, should not lose the benefit and advantage of their clergy. Three several doubts and questions moved upon the Stat. of 23 H. 8. c. 1.

Stat. 3. "And where also it hath been in question and doubted, that if such robberies and felonies happen to be committed and done in any booth or booths, tent or tents, in any fair or market, the owner of the same, his wife, children or servants happening to be within the same at the time of the committing of such felonies, and put in fear and dread, the offenders therein being found guilty after the laws of this realm, should not lose the benefit of their clergy. Poph. 84. Coron. Br. 160, (159.)

Sec. 4. "For the true declaration and explication of the same doubts or questions before recited, be it enacted, ordained and established by the king our sovereign lord, the lords spiritual and temporal, and the commons in this present parliament assembled, and by the authority of the same, That if it happen any person or persons to be found guilty according to the laws of this realm, for robbing of any person or persons after the first day of May next ensuing, in any part or parcel of their dwelling-houses, or dwelling places, the owner or dweller in the same house, or his wife, his children or servants being then within the same house or place where it shall happen the same robbery and felony to be committed and done, or in any other place within the precinct of the same house or dwelling place, that such offenders shall in no wise be admitted to their clergy, whether the owner or dweller in the same house, his wife or children then and there being, shall be waking or sleeping.

Burglary, the owner, &c. being in another part of the house, or asleep.
4 Co. 40.

Sec. 5. "And that no person or persons which after the said first day of May shall happen to be found guilty after the laws of this realm, of and for robbing any person or persons in any booth or tent, in any fair or market, the owner, his wife, his children or servants, or servant, then being within the same booth or tent, shall not from henceforth be admitted to the benefit of his or their clergy, but utterly be excluded thereof, and suffer death in such manner and form as is before mentioned in the said act made in the said xxiii year of the reign of the same late king, for robberies and felonies committed and done in dwelling-houses and dwelling-places, the owner or dweller in the same, his wife, children or servants then being within the same, and put in fear and dread, without having any respect or consideration whether the owner or dweller in such booths and tents, his wife, children or servants, being in the same booths or tents at the time of such robberies and felonies committed, shall be sleeping or waking."

Burglary in a tent or booth, in a fair or market.

23 H. 8. c. 1.

STAT. 8 *Eliz. c. 4.* [*A. D. 1565. Intituled*] "An act to take away the benefit of clergy from certain offenders for felony."

"Where a certain kind of evil-disposed persons, commonly called cut-purses, or pick-purses, but indeed by the laws of this land, very felons and thieves, do confeder together, making among themselves, as it were, a brotherhood or fraternity of an art or mystery, to live idly by the secret spoil of the good and true subjects of this realm; (2) And as well at sermons and preachings of the word of God, and in places and time of doing service and common prayer in churches, chapels, closets and oratories; and not only there, but also in the prince's palace, house, yea and presence, and at the places and courts of justice, and at the times of ministration of the laws in the same, and in fairs, markets, and other assemblies of the people; yea, and at the time of doing of execution of such as been attainted of any murder, felony, or other criminal cause, ordained chiefly for terror and example of evil-doers, do without respect or regard of any time, place or person, or of any fear or dread of God, or any law

He that taketh away privately from the person of another, money or goods, not knowing thereof, shall not have his clergy, &c.

The impudent boldness of cut-purses and pick-purses.

law or punishment, under the cloak of honesty, by their outward apparel, countenance and behaviour, subtilly, privily, craftily, and feloniously take the goods of divers good and honest subjects, from their persons, by cutting and picking their purses, and other felonious sleights and devices, to the utter undoing and impoverishing of many :

Stat. 2. " Be it therefore enacted by the authority of this present parliament, That no person or persons, which hereafter shall happen to be indicted or appealed for felonious taking of any money, goods or chattels, from the person of any other, privily without his knowledge, in any place whatsoever, and thereupon found guilty by verdict of twelve men, or shall confess the same upon his or their arraignment, or will not answer directly to the same, according to the laws of this realm, or shall stand wilfully, or of malice, or obstinately mute, or challenge preremptorily above the number of twenty, or shall be upon such indictment or appeal outlawed, shall from henceforth be admitted to have the benefit of his or their clergy, but utterly be excluded thereof, and shall suffer death in such manner and form, as they should if they were no clerks. 2 Rol. 154.

Stat. 3. " And also, whereas divers persons do oft-times commit, and do divers and sundry detestable murders, heinous robberies and felonies, and other capital offences, for the which clergy is not allowable by the laws and statutes of this realm, and after the same offences so done, either fly out of the county, or other parts of this realm, into the parts beyond the seas, or keep themselves secret in other places where they are not known, for a great time, and after happen to commit some other felony, for the which they may have their clergy, and being arraigned for the same, have their clergy to them allowed, and thereupon committed to the custody of the ordinary, according to the law and custom of this realm, the former offence, wherein clergy is not grantable, being not then known ; (2) and so by that means cannot after be impeached for the said other horrible and great offences, by the law and custom of this realm, to the great encouraging of offenders using such practices of foreknowledge and set purpose, for their discharge of the same. Where one shall be arraigned for a former offence having his clergy for a latter. 18 Eliz. c. 7. 25 Ed. 3. Stat. 3 & 4. c. 5. Poph. 107.

Stat. 4. " For reformation whereof, Be it further enacted by the authority aforesaid, That every person or persons, which shall hereafter upon his and their arraignment for any felony, be admitted to the benefit of his clergy, by the laws of this realm, and delivered to the ordinary for the same, and shall make his due purgation for the same offence or offences, whereupon he was so admitted to his clergy, and shall before the same admission to his clergy, have committed any other such offence, whereupon clergy by the laws or statutes of this realm is not allowable ; and not being thereof before indicted and acquitted, convicted, or attainted, or pardoned, shall and may be indicted or appealed for the same, and thereupon put to answer, and ordered and used in all things according to the laws and statutes of this realm, in such like manner and form, as though no such admission of clergy had been ; any law, custom, or usage to the contrary notwithstanding."

STAT. 39 *Eliz. c. 15.* [*A. D. 1597. Intituled*] “An act, that no person robbing any house in the day-time, although no person be therein, shall be admitted to have the benefit of his clergy.”

3 *Inst.* 65.

“Whereas of late years divers lewd and felonious persons understanding that the penalty of the robbing of houses in the day time (no person being in the house at the time of the robbery) is not so penal as to commit or do a robbery in any house, any person being therein at the time of the robbery; which hath and doth embolden divers lewd persons to watch their opportunity and time to commit and do many heinous robberies, in breaking and entring divers honest persons houses, and especially of the poorer sort of people, who by reason of their poverty are not able to keep any servant, or otherwise to leave any body to look to their house, when they go abroad to hear divine service, or from home to follow their labour to get their living, which is to the hindrance and loss of good subjects, and the utter impoverishing of many poor widows, sole women, and other people:

He shall not have his clergy that robbeth a house in the day-time of the value of five shillings. *Kelyng 31. 4 Co. 40. Cro. Car. 473.*

Stat. 2. Be it therefore enacted by our sovereign lady, the queen's most excellent majesty, the lords spiritual and temporal, and the commons of this present parliament assembled, That if any person or persons after the end of this present session of parliament, shall be found guilty, and convicted by verdict, confession or otherwise, according to the laws of this realm, for the felonious taking away after the feast of *Easter* now next ensuing, in the day-time of any money, goods or chattel, being of the value of five shillings or upwards, in any dwelling-house or houses, or any part thereof, or any out-house or out-houses belonging, and used to and with any dwelling-house or houses, although no person shall be in the said house or out-houses at the time of such felony committed; then such person and persons shall not be admitted to the benefit of his or their clergy, but shall be utterly excluded thereof.”

STAT. 3 *Will. & Ma. c. 9.* [*A. D. 169.* *Intituled*] “An act to take away clergy from some offenders, and to bring others to punishment.”

Stat. 1. “Any person convicted of robbing a dwelling-house wherein there is any or no person, &c. or standing mute, shall lose his clergy. See *Burglary*, Vol. 1. page 447.

Persons indicted for a crime, of which being convicted they should not have their clergy, if they stand mute, &c. shall not have it.

Stat. 2. “And be it further enacted by the authority aforesaid, That if any person or persons whatsoever be indicted of any offence, for which, by virtue of any former statute, he or they are excluded from having the benefit of his or their clergy, if he or they had been thereof convicted by verdict or confession, if he or they stand mute, or will not answer directly to the felony, or shall challenge preremptorily above the number of twenty persons returned to be of the jury, or shall be outlawed thereupon, shall not be admitted to the benefit of his or their clergy.

Stat.

Stat. 3. “ And be it further enacted by the authority aforesaid, That if any person or persons hereafter be indicted of felony for stealing of any goods or chattel in any county within this realm of *England*, dominion of *Wales*, or town of *Berwick upon Tweed*, and thereof be convicted or attainted, or upon his or their arraignment shall stand mute, or will not directly answer to the indictment, or shall challenge peremptorily above the number of twenty persons returned to be of the jury, he or they shall be totally excluded from having the benefit of his or their clergy, if it appear, upon evidence or examination before the justices, that the said goods or chattel were taken by robbery or burglary, or in any other manner, in any other county, whereof if such person or persons had been convicted by a jury of the said other county, he or they are excluded, by virtue of this or any other act, from having the benefit of his or their clergy.”

Persons indicted of a crime, as above, in a wrong county, if they stand mute, &c. shall not have it.

Stat. 4. “ And forasmuch as thieves and robbers are much encouraged to commit such offences, because a great number of persons make it their trade and business to deal in the buying of stolen goods: Be it therefore enacted by the authority aforesaid, That if any person or persons shall buy or receive any goods or chattel that shall be feloniously taken or stolen from any other person, knowing the same to be stolen, he or they shall be taken and deemed an accessory or accessaries to such felony after the fact, and shall incur the same punishment as an accessory or accessaries to the felony, after the felony committed.

Buyers of stolen goods reputed accessaries to felony.

Stat. 5. “ And whereas it is a frequent practice for idle and disorderly persons to hire lodgings with an intent to have an opportunity to take away, imbezel, or purloin the goods and furniture being in such lodgings: be it therefore enacted and declared by the authority aforesaid, That if any person or persons shall take away, with an intent to steal, imbezel, or purloin any chattel, bedding, or furniture, which by contract or agreement he or they are to use, or shall be let to him or them to use, in or with such lodging, such taking, imbezelling, or purloining, shall be to all intents and purposes taken, reputed, and adjudged to be larceny and felony, and the offender shall suffer as in case of felony.”

Stealing goods from lodgings felony.

Stat. 6. “ And whereas by the laws of this realm, women convicted of felony for stealing of goods and chattel of the value of ten shillings and upwards, and for other felonies, where a man is to have the benefit of his clergy, are to suffer death: be it therefore enacted and declared by the authority aforesaid, That where a man being convicted of any felony for which he may demand the benefit of his clergy, if a woman be convicted for the same or like offence, upon her prayer to have the benefit of this statute, judgment of death shall not be given against her upon such conviction, or execution awarded upon any outlawry for such offence, but shall suffer the same punishment as a man should suffer, that has the benefit of his clergy allowed him in the like case; that is to say, shall be burnt in the hand by the gaoler in open court, and further be kept in prison for such time as the justices in their discretion shall think fit, so as the same do not exceed one year's imprisonment.

Women convicted of crimes for which men have their clergy, upon prayer punished as men. By 4. & 5 W. & M. c. 24. s. 13. Women to have clergy but once.

Where a person has had his clergy in another county, clerk of the crown, &c. shall certify it.

Stat. 7. "And for as much as such men who have once had their clergy, and such women who shall have once the benefit of this statute, may happen to be indicted for an offence committed afterwards in some other county: Be it therefore enacted, That the clerk of the crown, clerk of the peace, clerk of the assizes where such man or woman shall be convicted, shall at the request of the prosecutor, or any other in their majesties behalf, certify a transcript, briefly and in few words, containing the effect and tenor of every indictment and conviction of such man or woman, of his having the benefit of the clergy, or her having the benefit of this statute, and addition of every such person or persons, and the certainty of the felony and conviction, to the judges and justices in such other county where such man or woman shall be indicted, which certificate being produced in court shall be a sufficient proof that such man hath before had the benefit of his clergy, and that such woman hath had the benefit of this statute. *Made perpetual by 6 & 7 W. 3. c. 14. s. 1.*"

STAT. 10 & 11 Will. 3. c. 23. See this act under **Burglary**, vol. 1. page 448.

STAT. 5 Ann. c. 31. See this act under **Burglary**, vol. 1. page 450.

STAT. 12 Ann. St. 1. c. 7. [*A. D. 1713. Intituled*] "An act for the more effectual preventing and punishing robberies that shall be committed in houses."

After 1 July, 1713, Persons stealing to the value of 40s. being in a dwelling-house, &c. tho' such house, &c. be not broken, &c. and being thereof convicted, shall be debarred the benefit of clergy.

"Forasmuch as divers wicked and ill-disposed servants, and other persons, are encouraged to commit robberies in houses by the privilege, as the law now is, of demanding the benefit of their clergy; Be it therefore enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that all and every person or persons that shall, at any time, from and after the first day of July, in the year one thousand seven hundred and thirteen, feloniously steal any money, goods, or chattels, wares, or merchandizes, of the value of forty shillings or more, being in any dwelling-house or out-house thereunto belonging, although such house or out-house be not actually broken by such offender, and although the owner of such goods, or any other person or persons, be or be not in such house or out-house, or shall assist, or aid any person or persons to commit any such offence, being thereof convicted or attainted by verdict or confession, or being indicted thereof, shall stand mute, or will not directly answer to the indictment, or shall peremptorily challenge above the number of twenty returned to be of the jury, shall, by virtue of this act, be absolutely debarred of and from the benefit of clergy; any law or custom to the contrary notwithstanding."

Not to extend to apprentices under 15 years of age.

Stat. 2. "Provided always, that nothing in this act shall extend to apprentices under the age of fifteen years, who shall rob their masters, as aforesaid."

Sect. 3. And whereas there has been some doubt, whether the entering into the mansion-house of another, without breaking the same, with an intent to commit some felony, and breaking the said house in the night time to get out, be burglary: Be it declared and enacted by the authority aforesaid, That if any person shall enter into the mansion or dwelling-house of another, by day or by night, without breaking the same, with an intent to commit felony, and shall in the night-time break the said house to get out of the same, such person is and shall be adjudged and taken to be guilty of burglary, and shall be ousted of the benefit of his and her clergy, in the same manner, as if such person had broke and entered the said house in the night-time, with an intent to commit felony there.

Entering into a house without breaking it, or being there committing felony, and breaking the house in the night to get out, shall be burglary.

STAT. 4 Geo. 1 c. 11. [A. D. 1717. Intituled] “ An act for the further preventing robbery, burglary, and other felonies, and for the more effectual transportation of felons, and unlawful exporters of wool: and for declaring the law upon some points relating to pirates.

Sect. 1. “ Whereas it is found by experience, That the punishments inflicted by the laws now in force against the offences of robbery, larceny and other felonious taking and stealing of money and goods, have not proved effectual to deter wicked and evil-disposed persons from being guilty of the said crimes: and whereas many offenders, to whom royal mercy hath been extended, upon condition of transporting themselves to the *West-Indies*, have often neglected to perform the said condition, but returned to their former wickedness, and been at last, for new crimes, brought to a shameful and ignominious death: and whereas in many of his majesty's colonies and plantations in *America*, there is great want of servants, who by their labour and industry might be the means of improving and making the said colonies and plantations more useful to this nation: Be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and the commons in this present parliament assembled, and by the authority of the same, That where any person or persons have been convicted of any offence within the benefit of clergy, before the twentieth day of *January*, one thousand seven hundred and seventeen, and are liable to be whipt or burnt in the hand, or have been ordered to any workhouse, and who shall be therein on the said twentieth day of *January*; as also where any person or persons shall be hereafter convicted of grand or petit larceny, or any felonious stealing or taking of money, or goods and chattels, either from the person, or the house of any other, or in any other manner; and who by the law shall be entitled to the benefit of clergy, and liable only to the penalties of burning in the hand, or whipping, (except persons convicted for receiving or buying stolen goods, knowing them to be stolen) it shall and may be lawful for the court before whom they were convicted, or any court held at the same place with the like authority, if they think fit, instead of ordering any such offenders to be burnt in the hand, or whipt, to order and direct, that such offenders, as also such offenders in any workhouse, as aforesaid, shall be sent, as years,

This act is enforced.
6 Geo. 1. c. 23.

Persons who before the 20th of Jan. 1717, have been convicted of offences within the benefit of clergy; and also such as shall hereafter be convicted;

except receivers and buyers of stolen goods, shall be sent to the plantations for seven years.

The court before whom convicted to contract for their transportation.

Persons convicted of offences, for which they are excluded the benefit of clergy,

and also receivers and buyers of stolen goods, may be transported for 14 years; and the persons contracting for their transportation, shall have a property in their service.

Returning before the expiration of the term, shall be punished with death.

That king may pardon such transportation, the offender paying his owner such sum as two justices shall adjudge.

Service of the term shall have the effect of a pardon.

Contractors to give security for the trans-

soon as conveniently may be, to some of his majesty's colonies and plantations in *America*, for the space of seven years; and that the court before whom they were convicted, or any subsequent court held at the same place, with like authority as the former, shall have power to convey, transfer and make over such offenders, by order of court, to the use of any person or persons who shall contract for the performance of such transportation, to him or them, and his and their assigns, for such term of seven years; and where any persons have been convicted, or do now stand attainted of any offences whatsoever, for which death by law ought to be inflicted, or where any offenders shall hereafter be convicted of any crimes whatsoever, for which they are by law to be excluded the benefit of clergy, and his majesty, his heirs or successors, shall be graciously pleased to extend royal mercy to any such offenders, upon condition of transportation to any part of *America*, and such intention of mercy be signified by one of his majesty's principal secretaries of state, It shall and may be lawful to and for any court, having proper authority to allow such offenders the benefit of a pardon under the great seal, and to order and direct the like transfer and conveyance to any person or persons, (who will contract for the performance of such transportation) and to his and their assigns, of any such before mentioned offenders, as also of any person or persons convicted of receiving or buying stolen goods, knowing them to be stolen, for the term of fourteen years, in case such condition of transportation be general, or else for such other term or terms as shall be made part of such condition, if any particular time be specified by his majesty, his heirs and successors, as aforesaid; and such person or persons so contracting, as aforesaid, his or their assigns, by virtue of such order of transfer, as aforesaid, shall have a property and interest in the service of the said offenders for such terms of years.

Sec. 2. And be it further enacted by the authority aforesaid, That if any offender or offenders, so ordered by any such court to be transported for any term of seven years or fourteen years, or other time or times, as aforesaid, shall return into any part of *Great-Britain* or *Ireland* before the end of his or their said term, he or she so returning, as aforesaid, shall be liable to be punished as any person attainted of felony without the benefit of clergy; and execution may and shall be awarded against such offender or offenders accordingly. Provided nevertheless, That his majesty, his heirs and successors, may at any time pardon and dispense with any such transportation, and allow of the return of any such offender or offenders from *America*, he or they paying their owner or proprietor, at the time of such pardon, dispensation, or allowance, such sum of money as shall be adjudged reasonable by any two justices of the peace residing within the province where such owner dwells; and where any such offenders shall be transported, and shall have served their respective terms, according to the order of any such court, as aforesaid, such services shall have the effect of a pardon to all intents and purposes, as for that crime or crimes for which they were so transported, and shall have so served, as aforesaid.

Sec. 3. And be it further enacted by the authority aforesaid, That every such person or persons, to whom any such court shall order any such offenders

senders to be transferred or conveyed, as aforesaid, before any of them shall be delivered over to such person or persons, or his or their assigns, to be transported, as aforesaid, he or they shall contract and agree with such person or persons as shall be ordered and appointed by such court, as aforesaid, and give sufficient security to the satisfaction of such court, that he or they will transport, or cause to be transported effectually such offenders so conveyed to him or them, as aforesaid, to some of his majesty's colonies and plantations in *America*, as shall be ordered by the said court, and procure an authentic certificate from the governor, or the chief Custom-house officer of the place (which certificate they are hereby required to give forthwith, without fee or reward, as soon as conveniently may be) of the landing of such offenders so transferred, as aforesaid, in that place where they shall be ordered, (death and casualties of the sea excepted) and that none of the said offender shall be suffered to return from the said place to any part of *Great-Britain* or *Ireland* by the wilful default of such person or persons so contracting, as aforesaid, or by the wilful default of his or their assigns.

portation of such offenders,

and procure certificates from the governor, &c. where landed,

and that they shall not be suffered to return by his default.

Sec. 4. And whereas there are several persons who have secret acquaintance with felons, and who make it their business to help persons to their stolen goods, and by that means gain money from them, which is divided between them and the felons, whereby they greatly encourage such offenders: Be it enacted by the authority aforesaid, That wherever any person taketh money or reward, directly or indirectly, under pretence, or upon account of helping any person or persons to any stolen goods or chattels, every such person so taking money or reward, as aforesaid, (unless such person doth apprehend, or cause to be apprehended, such felon who stole the same, and cause such felon to be brought to his trial for the same, and give evidence against him) shall be guilty of felony, and suffer the pains and penalties of felony, according to the nature of the felony committed in stealing such goods, and in such and the same manner as if such offender had himself stole such goods and chattels, in the manner, and with such circumstances as the same were stolen.

Persons taking rewards for helping to stolen goods,

unless they cause the felon to be brought to trial, shall be guilty of felony.

Sec. 5. And whereas there are many idle persons, who are under the age of one and twenty years, lurking about in divers parts of *London*, and elsewhere, who want employment, and may be tempted to become thieves, if not provided for: and whereas they may be inclined to be transported, and to enter into services of some of his majesty's colonies and plantations in *America*: but as they have no power to contract for themselves, and therefore that it is not safe for merchants to transport them, or take them into such services: Be it enacted by the authority aforesaid, That where any person of the age of fifteen years, or more, and under the age of twenty-one, shall be willing to be transported, and to enter into any service in any of his majesty's colonies or plantations in *America*, It shall and may be lawful for any merchant, or other, to contract with any such person for any such service, not exceeding the term of eight years; provided such person so binding him or herself do come before the Lord Mayor of *London*, or some other justice of the peace of the city, if such contract be

Merchants, or others, may contract with persons of the age of 15, and under 21, to serve them in *America* for eight years. Provided such person ac-

knowledge made within the same, or the liberties thereof, or before some other two justices of the peace of the place where such contract shall be made, if his consent before a justice of peace, and made elsewhere, and before such magistrate or magistrates acknowledge such consent, and do sign such contract in his or their presence, and with sign the same with his approbation; and that then it shall be lawful for any such merchant, or other, to transport such person so binding him or herself, and to keep him or her within any of the said plantations or colonies, according to the tenor of such contract as aforesaid; any law or statute to the contrary in any wise notwithstanding: which said contract and approbation of such magistrate or magistrates, with the tenor of such contract, shall be certified by such magistrate or magistrates to the next general quarter-sessions of the peace, held for that county where such magistrate or magistrates shall reside, to be registered by the clerk of the peace without fee or reward.

Such contract, &c. to be certified to the quarter sessions.

STAT. 2 Geo. 2. c. 25. See this act under **forgery**.

STAT. 4 Geo. 2. c. 32. [*A. D. 1731. Intituled*] "An act for the more effectual punishing stealers of lead or iron bars fixed to houses, or any fences belonging thereunto."

Stealers of lead, iron bars, &c. fixed to houses, or any fences belonging thereto, shall be guilty of felony,

and be transported for 7 years.

"Whereas the pernicious practice of stealing lead, iron bars, iron gates, iron palisadoes, and iron rails fixed to dwelling-houses, out-houses, coach-houses, stables, and other buildings, and fixed in gardens, orchards, court-yards, fences, and outlets belonging to dwelling-houses, and other buildings, hath of late time been much used to the great detriment of his majesty's subjects; and it is necessary, for the more effectual preventing of such offences, to inflict a more exemplary punishment on such offenders, than by the laws of this realm can now be done; be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That from and after the twenty-fourth day of *June*, one thousand seven hundred and thirty-one, all and every person and persons who shall steal, rip, cut, or break, with intent to steal, any lead, iron bar, iron gate, iron palisadoe, or iron rail whatsoever, being fixed to any dwelling-house, out-house, coach-house, stable, or other building, used or occupied with such dwelling-house, or thereunto belonging, or to any other building whatsoever, or fixed in any garden, orchard, court-yard, fence, or outlet, belonging to any dwelling house, or other building, shall be deemed and construed to be guilty of felony; and every such felon and felons shall be subject and liable to the like pains and penalties, as in cases of felony; and the court, by and before whom such person or persons shall be tried, shall, and hereby have power and authority to transport such felons for the space of seven years, in like manner as other felons are directed to be transported by the laws and statutes of this realm; and all and every person and persons, who shall be aiding, abetting, or assisting in stealing, or in such ripping, cutting, or breaking any lead, iron bar, iron gate, iron

iron palisadoe, or iron rail, fixed to any dwelling-house, out-house, coach-house, stable, or other building, or fixed in any garden, orchard, court-yard, fence, or outlet, belonging to any dwelling-house, or other building, or who shall buy or receive any such lead, iron bar, iron gate, iron palisadoe, or iron rail, knowing the same to be stolen, shall be subject and liable to the same punishments, as if he, she, or they had stolen the same; any law to the contrary in any wise notwithstanding.

STAT. 24 Geo. 2. c. 45. [A. D. 1751. *Intituled*] “An act for the more effectual preventing of robberies and thefts upon any navigable rivers, ports of entry or discharge, wharfs, and keys adjacent.”

“Whereas divers wicked and ill-disposed persons are encouraged to commit robberies and thefts upon navigable rivers, ports of entry and discharge, wharfs and keys adjacent, by the privilege, as the law now is, of being admitted to the benefit of their clergy; Therefore, for the more effectual preventing such felonies for the future, be it enacted by the king’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal and commons in this present parliament assembled, and by the authority of the same, That all and every person or persons that shall, at any time from and after the twenty-fourth day of *June*, one thousand seven hundred and fifty-one, feloniously steal any goods, wares or merchandize, of the value of forty shillings, in any ship, barge, lighter, boat or other vessel, or craft, upon any navigable river, or in any port of entry or discharge, or in any creek belonging to any navigable river, port of entry or discharge, within the kingdom of *Great Britain*; or shall feloniously steal any goods, wares or merchandize, of the value of forty shillings, upon any wharf or key adjacent to any navigable river, port of entry or discharge, or shall be present, aiding and assisting in the committing any of the offences aforesaid, being thereof convicted or attainted, or being indicted thereof shall of malice stand mute, or will not directly answer to the indictment; or shall peremptorily challenge above the number of twenty persons returned, to be of the jury; shall be excluded from the benefit of clergy.”

Persons convicted of theft of 40s. value on board any vessel, or on any wharf, or assisting therein, &c. excluded from the benefit of clergy.

STAT. 25 Geo. 2. c. 36. [A. D. 1752.] *made, among other purposes*, “for the better preventing thefts and robberies.”

“Whereas the advertising a reward with no questions asked, for the return of things which have been lost or stolen, is one great cause and encouragement of thefts and robberies; be it enacted by the king’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That from and after the first day of *June*, one thousand seven hundred and fifty-two, any person publicly advertising a reward with no questions asked, for the return of things which have been stolen or lost, or making use of any words in such public advertisement, shall be liable to the same punishments, as if he, she, or they had stolen the same; any law to the contrary in any wise notwithstanding.”

The person advertising a reward for the return of things stolen or lost, &c.

lick advertisement, purporting that such reward shall be given or paid without seizing or making enquiry after the person producing such thing so stolen or lost, or promising or offering, in any such publick advertisement, to return to any pawnbroker, or other person, who may have bought or advanced money by way of loan upon such thing so stolen, or lost the money so paid or advanced, or any other sum of money or reward for the return of such thing; and any person printing or publishing such advertisement, shall respectively forfeit the sum of fifty pounds for every such offence, to any person who will sue for the same.

and the printer, to forfeit 50 l.

STAT. 29 *Geo. 2. c. 30.* [*A. D. 1756. Intituled*] “An act for more effectually discouraging and preventing the stealing, and the buying, and receiving of stolen lead, iron, copper, brass, bell-metal and solder, and for more effectually bringing the offenders to justice.”

“Whereas the pernicious practice of stealing lead, iron, copper, brass, bell-metal, and solder, fixed to, or lying, or being in or upon houses, out-houses, mills, warehouses, work-shops, and other buildings, areas, vaults, yards, gardens, orchards, or other places; and also the stealing of such materials from ships, barges, lighters, boats, and other vessels and craft, upon navigable rivers, in ports of entry or discharge, creeks and docks belonging thereto, and also from off wharfs, keys, and other places, is become a great and notorious evil, by reason of the difficulty in apprehending and convicting the thieves, and the still greater difficulty of discovering and convicting the buyers or receivers thereof; which buyers or receivers are the principal cause of the commission of such thefts; and in regard that the said offences are committed in such close and clandestine manner, that there can be no witness or witnesses to the same, but such who is or are partakers of the offence; and whereas if the buyers and receivers of lead, iron, copper, brass, bell-metal or solder, knowing or having reasonable cause to suspect the same to be stolen, or unlawfully come by, were made original offenders, and punishable independent of the apprehension and conviction of the thief; and if the apprehending, prosecuting, and convicting the offenders in both kinds were rendered more easy and speedy, it might more effectually tend to the discovery and suppression of the said offences: for remedy whereof, be it enacted by the king’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal and commons in this present parliament assembled, and by the authority of the same, That from and after the first day of *October* one thousand seven hundred and fifty-six, every person who shall buy or receive any lead, iron, copper, brass, bell-metal or solder, knowing the same to be stolen, or unlawfully come by; or shall privately buy or receive any stolen lead, iron, copper, brass, bell-metal or solder, by suffering any door, window, or shutter to be left open or unsfastened between sun-setting and sun-rising for that purpose; or shall buy or receive the same, or any of them, at any time in any clandestine manner from any person or persons whatsoever; shall, being thereof convicted

Buyers or receivers of any of the materials herein mentioned, knowing the same to be stolen, or unlawfully come by, &c.

convicted by due course of law, although the principal felon or felons has if convicted, not or have not been convicted of stealing the same, be transported for to be transported for 14 years. fourteen years to any of his majesty's colonies or plantations in America, according to the laws in force for the transportation of felons.

Señ. 2. And be it enacted by the authority aforesaid, That it shall and Where there may be lawful for any one justice of the peace, upon complaint made to is cause of suspicion, justice to issue a search warrant, him upon oath by any credible person, that there is cause to suspect stolen lead, iron, copper, brass, bell-metal or solder, is concealed in any dwelling-house, out-house, yard, garden, or other place or places, by warrant under his hand and seal, to cause every such dwelling-house, out-house, yard, garden and place, to be searched in the day-time; and if and the materials, and the party with whom the same are found to be carried before two justices, &c. any lead, iron, copper, brass, bell-metal or solder, suspected to be stolen, shall be found therein, to cause the same, and the person or persons in whose house, out-house, yard, garden, or other place, the same shall be found, to be brought before any two or more justices of the peace for the same county, city, riding, division, liberty or place; and if the said person or persons shall not give an account to the satisfaction of such justices, how he, she, or they came by the same; or shall not, within some convenient time, to be set by the said justices, produce the party or parties of or from whom he, she or they bought or received such stolen lead, iron, copper, brass, bell-metal or solder, that then the said person or persons so offending, shall be deemed and adjudged guilty of a misdemeanor. Party not accounting satisfactorily, deemed guilty of a misdemeanor.

Señ. 3. And be it further enacted by the authority aforesaid, That every Suspected persons, with any of the said materials in the night-time, may be apprehended by the parish officers or watchmen, and carried before two justices, &c. constable, headborough or tithingman, in every county, city, town corporate, or other place where they shall be officers, and every beadle within his ward, parish or district, and every watchman during such time only as he is on duty, shall and may apprehend, or cause to be apprehended, all and every person or persons who may reasonably be suspected of having or carrying, or any ways conveying, at any time after sun-setting, and before sun-rising, any lead, iron, copper, brass, bell-metal or solder, suspected to be stolen, or unlawfully come by; and the same, together with such person or persons, as soon as conveniently may be, to convey or carry before any two or more justices of the peace for the county, city, riding, division, liberty or place aforesaid; and if the person or persons so apprehended conveying any such lead, iron, copper, brass, bell-metal or solder, shall not produce the party or parties from whom he, she or they bought or received the same, or some other credible witness to depose upon oath the sale or delivery of the said lead, iron, copper, brass, bell-metal or solder (which oath any such justices are hereby impowered to administer) and not accounting satisfactorily, deemed guilty of a misdemeanor. or shall not give an account, to the satisfaction of any two or more of such justices, how he, she or they came by the same, that then the said person or persons so apprehended shall be deemed and adjudged guilty of a misdemeanor.

Señ. 4. And be it enacted by the authority aforesaid, That where any In which case, the materials to be deposited with the churchwardens, &c. person or persons shall be convicted of either of the misdemeanors aforesaid, it shall and may be lawful for any two or more of such justices to cause such lead, iron, copper, brass, bell metal or solder, to be deposited in

and public
notice by ad-
vertisement,
and otherwise,
to be given.

and the own-
er, proving
his property,
is to have
them.

otherwise they
are to be sold,
and the mo-
ney divided
between the
officer and
poor.

Person to
whom any
such materials
shall be
brought, to
be sold or
pawned, may
in any sus-
pected case,
stop and carry
the party be-
fore a justice,
&c.

otherwise, up-
on proof of
such reason-
able cause of
suspicion, he
is guilty of a
misdemeanor.

the hands of the churchwardens or overseers of the poor of the place where such lead, iron, copper, brass, bell-metal or solder were found, or in any other convenient place, for any time not exceeding thirty days: and in the mean time to order the said churchwardens and overseers of the poor, or one of them, in all and every of the parishes within the bills of mortality, to insert an advertisement in some public paper, and in every other parish or place to cause notice to be given by some public cryer, and by fixing on the church or chapel-door notice describing such lead, iron, copper, brass, bell-metal or solder, and where the same shall be deposited, to the end that persons having lost such lead, iron, copper, brass, bell metal or solder, may come and claim the same, or any reputable person on their behalf; and in case any person or persons can prove their property to the said lead, iron, copper, brass, bell metal or solder, upon oath, to the satisfaction of any two or more of such justices of the peace for such county, city, riding, division, liberty or place, that then such justices shall order restitution of such lead, iron, copper, brass, bell-metal or solder, to the owner or owners thereof, after paying the reasonable charges of removing, depositing and giving public notice of the same; and if at the end of the said thirty days no person or persons shall come and prove his, her or their property, nor any reputable person on his or their behalf, to such lead, iron, copper, brass, bell-metal or solder, the same to be sold for the best price that can reasonably be had; and after deducting the charges as aforesaid, one moiety of the money arising from such sale to be given to the person or persons who shall apprehend the party or parties guilty of the misdemeanors afore-mentioned, or either of them: and the other moiety thereof to the poor of the parish where such offence shall be committed (if it is known where) or else where such convictions shall be made.

Sec. 5. And be it further enacted by the authority aforesaid, That every person to whom any lead, iron, copper, brass, bell-metal or solder, shall be brought and offered to be sold, pawned or delivered, shall and is hereby impowered and required (there being reasonable cause to suspect that such lead, iron, copper, brass, bell-metal or solder, was stolen or unlawfully come by) to apprehend, secure, and carry before a justice of the peace for the county, riding, division, liberty or place where the same shall be so brought or offered (having it in his or her power so to do) the person or persons so bringing or offering the same, together with such lead, iron, copper, brass, bell-metal or solder; and such person or persons so apprehended shall be dealt with, and such lead, iron, copper, brass, bell-metal or solder, shall be deposited and disposed of, in the same manner, as if he, she or they had been apprehended by the constable, headborough, tythingman, beadle or watchman, as aforesaid; and if it shall appear upon the oath of any person, notwithstanding such person or persons was or were concerned in stealing the same, if corroborated with other credible circumstances, to the satisfaction of two or more justices of the peace for the county, city, riding, division, liberty or place, where the same shall be brought or offered as aforesaid, that there was reasonable cause to suspect such

such lead, iron, copper, brass, bell-metal or solder was stolen or unlawfully come by, and that the person or persons to whom such lead, iron, copper, brass, bell-metal, or solder, was so brought or offered, did not (having it in his, her or their power so to do) apprehend, secure and carry before a justice of the peace as aforesaid, the person or persons who so brought or offered the same, that then the person or persons to whom such lead, iron, copper, brass, bell-metal or solder was so brought or offered, shall be deemed and adjudged guilty of a misdemeanor.

Sec. 6. And be it further enacted, That every person deemed and adjudged guilty of a misdemeanor, in having in his, her or their possession, any lead, iron, copper, brass, bell-metal or solder, suspected to be stolen or unlawfully come by, and not producing the party or parties of whom he, she or they bought or received the same, not giving a satisfactory account, how he, she or they came by the same, or in having, carrying or conveying of lead, iron, copper, brass, bell-metal and solder, suspected to be stolen or unlawfully come by, and not producing the party or parties, from whom he, she or they bought or received the same, nor any credible witness to depose upon oath the sale or delivery thereof, not giving a satisfactory account how he, she or they came by the same (as the case shall be) shall, for every such misdemeanor, forfeit for the first offence, the sum of forty shillings, and for the second offence, the sum of four pounds, and for every subsequent offence, the sum of six pounds; and that every person deemed and adjudged guilty of the misdemeanor of neglecting to apprehend, secure and carry before a justice of the peace, the person or persons (having it in his, her or their power so to do) who brought or offered to sell, pawn or deliver, any lead, iron, copper, brass, bell-metal or solder (as the case shall be) suspected to be stolen or unlawfully come by, shall for every such misdemeanor, forfeit for the first offence, the sum of twenty shillings, and for the second offence, the sum of forty shillings, and for every subsequent offence the sum of four pounds; all which said respective forfeitures, shall and may be levied by distress and sale of the goods and chattels of every such offender (rendering to him or her the overplus, after charges of the said distress and sale deducted) by warrant under the hands and seals of any two or more of such justices, before whom such offender was deemed and adjudged guilty; which forfeiture shall be paid, one moiety thereof to the informer, and the other moiety thereof to the overseers of the poor, for the use of the poor of the parish or place where such offence was committed (if it is known where) or else where such conviction shall be made; and if no sufficient distress shall be found, whereon to levy the said respective forfeitures, then the said justices shall and may commit every such offender, so respectively deemed and adjudged guilty as aforesaid, to the common gaol or other prison, or house of correction, within their jurisdiction, without bail or mainprize, for the space of one month for the first offence, and for the second offence for the space of two months, and for every subsequent offence, until such offender shall be discharged by order of the court of general quarter sessions.

Persons convicted of a misdemeanor in having in their possession any of the said materials, &c. and not accounting satisfactorily for the same, to forfeit for the first offence 40s. for the second, 4l. and for every subsequent one, 6l. and being guilty of a misdemeanor in not carrying suspected persons before a justice, to forfeit for the first offence 20s. for the second 40s. and for every subsequent 4l. Forfeitures how to be levied and applied. For want of distress, offender to be committed.

Sec.

Convictions
to be certified
to the quarter
sessions,

in the form
following.

Señ. 7. " And be it further enacted, That every conviction of any offender in any of the aforesaid misdemeanors, shall be certified by two or more of the justices of the peace, making the same, to the next general or quarter sessions of the peace, to be filed and entered amongst the records of the said sessions; and that such conviction shall and may be drawn up on parchment, and certified in the following form of words (as the case shall happen) or in any other form of words to the like effect, *mutatis mutandis*; that is to say,

Middlesex, } *BE it remembered, That on the* day of
to wit. } *in the year* A. B. was convicted before us
of the justices of the peace for the county, city, riding, division, liberty or place aforesaid (as the case shall be) of a misdemeanor in having in his, her or their possession, lead, iron, copper, brass, bell-metal or solder, suspected to be stolen or unlawfully come by, and not producing the party or parties, of whom he, she or they, bought or received the same, nor giving a satisfactory account how he, she or they came by the same, or in having, carrying or conveying of lead, iron, copper, brass, bell-metal or solder, suspected to be stolen or unlawfully come by, and not producing the party or parties, from whom he, she or they bought or received the same, nor any credible witness to depose upon oath the sale or delivery thereof, or not giving a satisfactory account how he, she or they came by the same, or of neglecting to apprehend and secure the person or persons, who brought and offered to pawn, sell or deliver, lead, iron, copper, brass, bell-metal or solder, suspected to be stolen, or unlawfully come by (as the case shall be)

Given under our hands and seals the day and year aforesaid.

Said conviction not to be
quashed or re-
moved by cer-
tiorari.

Which said conviction, in the same or the like form of words, shall be good and effectual in law to all intents and purposes, and shall not be quashed, set aside, or adjudged void or insufficient for want of any other form or words whatsoever, nor be liable to be removed by certiorari into his majesty's court of King's Bench, but shall be deemed and taken to be final to all intents and purposes whatsoever.

Felon con-
victing the
buyers or re-
ceivers of such
stolen mate-
rials, is intit-
led to his ma-
jesty's pardon;

Señ. 8. And be it further enacted by the authority aforesaid, That if any person being out of prison, shall after the said first day of *October* one thousand seven hundred and fifty-six, commit any felony, by stealing any lead, iron, copper, brass, bell metal or solder, and afterwards discover two or more persons, who shall buy or receive any stolen lead, iron, copper, brass, bell-metal or solder, after the said first day of *October* one thousand seven hundred and fifty-six, knowing the same to be stolen, so as two or more of the persons discovered, shall be convicted of such buying or receiving, he, she or they so discovering, shall have, and be intitled to, the gracious pardon of his majesty, his heirs and successors, for all such felonies by him or her committed, at any time or times before such discovery made, which pardon shall be likewise a bar to any appeal brought for such felony.

Señ.

Señ. 9. “ And be it further enacted by the authority aforesaid, That if any person shall be concerned in the stealing any lead, iron, copper, brass, bell-metal or solder, and shall afterwards, being out of prison, discover any person to whom he, she or they shall have, after the said first day of *October*, offered to sell, pawn or deliver, any stolen lead, iron, copper, brass, bell-metal or solder, so as such person be convicted of the misdemeanor of not apprehending, securing and carrying, him, her or them, before a justice, as aforesaid, that then the person making such discovery, shall not be liable to be prosecuted for stealing the lead, iron, copper, brass, bell-metal or solder, so offered as aforesaid.”

and convicted any of a misdemeanor, in not apprehending, &c. Offender offering to sell or pawn the same, is discharged from prosecution for such felony.

Señ. 10. “ And be it further enacted by the authority aforesaid, That if any action or suit shall be commenced or brought against any justice or justices of the peace, or other officer or person whatsoever, for doing or causing to be done, any thing in pursuance of this act, concerning the said offences, the same shall be commenced or brought within six months after such cause of action has accrued; and the defendant in such case may plead the general issue, and give the special matter in evidence; and if upon such action a verdict shall be given for the defendant, or the plaintiff become nonsuited, or discontinue his action, the defendant shall have treble costs.”

Limitation of actions.

General issue.

Treble costs.

Señ. 11. “ Provided always, That nothing herein contained shall extend, or be construed to extend, to repeal any former law now in being, for the punishment of such offenders; and provided also, that such offender, after having been punished by this act, shall not for the same offence, be afterwards punished, or be liable to be punished, by any such former law.”

Former laws not vacated, nor offenders liable to double punishment.

By *STAT. 30 Geo. 2. c. 24. señ. 7 & 8.* “ persons offering goods to sale, pawn or exchange, not giving a good account of themselves, may be detained, and carried before a justice, who may commit the party; and the person detaining party and goods is indemnified.” See *Cheat*, vol. I. page 594.

STAT. 2 Geo. 3. c. 28. [A. D. 1761, intituled] “ An act to prevent the committing of thefts and frauds by persons navigating bum boats, and other boats, upon the river *Thames*.”

“ Whereas many ill-disposed persons, using and navigating upon the river *Thames* certain boats commonly called *bum boats*, and other vessels, under pretence of selling liquors of different sorts; and also slops, tobacco, brooms, fruit, greens, gingerbread, and other such-like ware and things, to and amongst the seamen and labourers employed in and about ships, vessels, and other craft there, do frequently take occasion to cut, damage, and spoil the cordage, cables, buoys, and buoy ropes, and the headstays and other fasts belonging to such ships, vessels, and craft, and fraudulently carry away the same; likewise encourage such seamen and labourers to dispose of such cordage, cables, and buoys, and such goods, merchan-

Preamble.

From and after the 24th June, 1762, persons using, letting out to hire, lending, or navigating, &c. bum boats, or other boats, on the river, for the purpose of selling liquors, slops, tobacco, brooms, gingerbread, or garden wate, &c. except such boats as shall be entered at the office of the Trinity-house, &c. and persons taking in exchange, or by way of barter, or unlawfully receiving, &c. any ropes, cordage, goods, stores, or merchandise, of vessels in the river; being convicted before a justice shall be deemed guilty of a misdemeanor; and the boat, with those on board, may be seized and searched, and the persons conveyed before a justice; and the boat, with her furniture and lading, upon such conviction shall be forfeited.

Bum boats, and others, used upon the river for the purposes aforesaid, are to be entered

dizes, materials, and stores, secretly and unlawfully, whereby great losses are sustained by merchants, and owners of such ships, vessels, and other craft, in the said river: for remedy whereof, be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That from and after the twenty-fourth day of *June* one thousand seven hundred and sixty-two, if any person or persons shall use, let out to hire, lend, or navigate, or shall be aiding or assisting in using or navigating upon the said river, any bum boat, or other boat, for the purpose of selling, bartering, exchanging, or exposing to sale, to and amongst the seamen and labourers employed in and about ships, vessels, and other craft, any liquors, slops, tobacco, brooms, or any fruit, greens, gingerbread, or other such like ware; or shall sell, barter, exchange, or expose to sale as aforesaid, any sort of liquor, or any slops, tobacco, brooms, or any fruit, greens, gingerbread, or other such like ware or things in, from, or out of, any bum boat, or other boat (other than and except such bum boats and other boats and vessels, as shall be entered in the office of the maller, wardens, and assistants of the guild, fraternity, or brotherhood, of the most glorious and undivided *Trinity*, and of *Saint Clement* in the parish of *Deptford Strond* in the county of *Kent*, in manner herein after mentioned, and shall be used and navigated for the purposes aforesaid, in the day-time, between sun-rising and sun-setting only) or if any person or persons shall take in exchange, or by way of barter, or shall unlawfully receive, or procure to be delivered to them, any ropes, cordage, tackle, apparel, furniture, stores, materials, or any part of any cargo or loading of any ships, or vessels, in the said river, all and every such person or persons respectively shall, upon conviction thereof before any justice or justices of the peace of and within any county, city, division, liberty, or place adjoining to the said river, upon the oath of one or more credible person or persons, be deemed guilty of a misdemeanor; and it shall and may be lawful for any person or persons to apprehend and detain all persons then on board such boat; and also to seize, search, and detain, in some place of safety, such boat, and the tackle, apparel, and furniture, and loading thereof; and the person and persons so apprehended shall be (as soon as conveniently may be) conveyed before such justice or justices of the peace as aforesaid; and such boat, with the said tackle, apparel, furniture, and loading thereof, shall, upon such conviction as aforesaid, be forfeited and disposed of as is herein after mentioned.

Seet. 2. " And be it enacted by the authority aforesaid, That from and after the twenty-fourth day of *June*, one thousand seven hundred and sixty-two, every bum boat, or other boat whatsoever, used and navigated for the purposes aforesaid, upon the said river between *London Bridge* and the *Lower Hope Point*, shall be entered by the owner or owners thereof with

with the master, wardens, and assistants at their office at the *Trinity-house*, by the owner in *Water-Lane, London*, specifying the name or names, and place or places of abode of such owner or owners; to the intent that the said master, wardens, and assistants, may register every entry, and deliver in writing to such owner or owners a number to be marked on one or more part or parts of every such bum boat, or other boat; and every such owner or owners shall cause the number to be forthwith marked, together with his, her, or their christian and surname or names, and place or places of abode, upon such part or parts of the said boat so entered as aforesaid, in such manner as the said master, wardens, and assistants shall, from time to time, direct and appoint, in pursuance of the authorities and directions herein after given for that purpose.

said boats, as the Trinity company shall direct.

Sett. 3. " Provided also, That every time, and so often as the property of any such bum boat, or other boat, shall be varied or altered, the new owner or owners shall forthwith make a fresh entry of the same, and cause the number delivered in pursuance thereof to be marked on the said boat, together with his, her, or their christian and surname or names, and place or places of abode, upon such part or parts of the said boat, and in like manner as is herein before directed, at the first entering of any such boat.

such boat shall be altered.

Sett. 4. " And be it further enacted, That the said master, wardens, and assistants, shall, and they are hereby impowered and required, to receive and register every such entry in a book or roll to be provided and kept for that purpose, and to deliver out a number, in writing, to such owner or owners, to be marked on one or more part or parts of such boat, in such manner as shall be directed and appointed in pursuance of this act; for the registering which entry, and delivering out such number, the sum of five shillings shall be paid, and no more; and the said master, wardens, and assistants, are hereby authorized and impowered to take and receive the same, and, from time to time, to make such orders, rules, and regulations, as they shall think requisite and proper, for the ascertaining the part or parts of such boat on which the said number, and the names and place or places of abode of the owner or owners thereof, shall be marked, and in what manner, and of what dimensions the figure or figures and letters, composing such number, and names and place or places of abode, shall be made, and how the same shall be, from time to time, renewed, and kept fair and legible; and that all such orders, rules, and regulations, after one publication thereof in the *London Gazette*, and printed copies of the same being affixed at *Iron Gate, the Hermitage, Execution Dock, Shadwell Dock, Rotherhithe Old Stairs, Deptford, Radcliffe Cross, and Blackwall*, shall be observed by, and binding upon, every owner and owners of such boats so entered as aforesaid.

done, and how renewed, and kept legible; which after publication in the *London Gazette*, and copies thereof affixed at the proper places, shall be observed by the owners of such boats.

The master and wardens of the said company, or persons deputed by them, also all owners or masters of vessels in the river, or persons authorized by 7 or more of them, may stop and search any boat suspected to have any ropes and stores, or other materials, &c. stolen, or unlawfully procured from out of vessels in the river; and carry the persons suspected of being concerned therein before a justice, and they not giving a satisfactory account how they came by the same, shall be adjudged guilty of a misdemeanor; and the boat and loading, &c. shall be forfeited.

Constables and beadles and watchmen when on duty, may seize all ropes, stores, or other goods suspected to be stolen, or unlawfully procured from out of vessels in the river, and carry the persons concerned therein before a justice, and they not

Stat. g. " And be it enacted by the authority aforesaid, That it shall and may be lawful for the said master, wardens, and assistants, or such person or persons as they shall from time to time depute and appoint under the seal of their corporation, and for all owners or masters of ships or vessels, either in whole or in part, in the said river respectively, or for such person and persons as the said owners and masters, or any seven or more of them, by writing under their hands and seals, shall, for that purpose, nominate, depute, and appoint (and which it shall be lawful for them, from time to time, to do) at any time or times from and after the twenty-fourth day of *June*, one thousand seven hundred and sixty-two, to stop, search, and detain, in some place of safety, any boat, which there shall be reason to suspect has any ropes, cordage, tackle, apparel, furniture, stores, materials, or any part of any cargo or lading, stolen, or unlawfully procured, from or out of any ship or vessel in the said river; and also to apprehend and detain, or cause to be apprehended and detained, any person or persons who may be reasonably suspected of having or conveying any such goods, stores, or things, in such boat; and such person or persons so apprehended, shall be (as soon as conveniently may be) conveyed before one or more justice or justices of the peace for any county, city, division, liberty, or place, adjoining to the said river: and if such person or persons shall not produce the party or parties, from whom he, she, or they, bought or received such merchandizes, goods, stores, or things, aforesaid, or some credible person to depose, upon oath, the sale or delivery thereof, or shall not give an account to the satisfaction of such justice or justices, how he, she, or they, came by the same; that then the said person or persons so apprehended shall be deemed and adjudged guilty of a misdemeanor; and such boat, with her tackle, apparel, furniture, and loading, shall, upon such conviction, be forfeited and disposed of as is herein after directed.

the same, shall be adjudged guilty of a misdemeanor; and the boat and loading, &c. shall be

Stat. 6. " And be it further enacted by the authority aforesaid, That every constable, headborough, and beadle, and every watchman (during such time as he shall be on duty) of every parish and place where he shall be an officer, shall and may apprehend and detain, or cause to be apprehended and detained, all and every person and persons, who may reasonably be suspected of having or carrying, or any ways conveying, any ropes, cordage, tackle, apparel, furniture, stores, materials, or any part of any cargo or lading, stolen or unlawfully procured from or out of any ship or vessel in the said river *Thames*, and also shall and may seize and detain in some place of safety such merchandizes, goods, stores, and things aforesaid, and shall, as soon as conveniently may be, convey, or cause the person or persons so apprehended to be conveyed before any one or more justice or justices of the peace, for any county, city, division, liberty, or place, adjoining to the said river; and if such person or persons shall not produce the party or parties from whom he, she, or they, bought or received the same, or some credible person, to depose upon oath the sale or delivery

delivery thereof, or shall not give an account, to the satisfaction of such justice or justices, how he, she, or they, came by the same, that then the said person and persons so apprehended shall be deemed and adjudged guilty of a misdemeanor.

giving a satisfactory account how they came by the same, shall be adjudged guilty of a misdemeanor.

Sett. 7. " And be it further enacted by the authority aforesaid, That it shall and may be lawful for any justice of the peace, upon information made to him on oath, by any credible person or persons, that there is cause to suspect that any merchandizes, goods, stores, or things (suspected to have been stolen or unlawfully come by, or taken from some ship or vessel in the said river, are concealed in any dwelling-house, warehouse, outhouse, yard, garden, or other place, by warrant under his hand and seal, to cause every such dwelling house, warehouse, outhouse, yard, garden and place, to be searched in the day-time: and if any such merchandizes, goods, stores, or things, shall be found therein, to cause the same to be deposited and kept in some place of safety; and also to cause the person or persons in whose house, warehouse, outhouse, yard, garden, or other place, the same shall be found, to be brought before him, or any other justice or justices of the peace for the same county, city, division, liberty or place; and if such person or persons shall not give an account to the satisfaction of such justice or justices, how he, she, or they, came by the same, or shall not within some reasonable and convenient time, to be set by such justice or justices, produce the party or parties of or from whom he, she, or they, bought or received the same merchandizes, goods, stores, or things, that then the person or persons in whose house, warehouse, outhouse, yard, garden, or other place, the same shall be found, shall be deemed and adjudged guilty of a misdemeanor.

Justices upon information on oath of a suspicion of the concealment of stolen goods or merchandizes, may grant a search warrant; and the goods thereupon found, are to be secured; and the persons of the house, &c. are to be brought before a justice; and they, not giving a satisfactory account how they came by the same, shall be adjudged guilty of a misdemeanor.

" Sett. 8. " And be it enacted by the authority aforesaid, That upon any person or persons being convicted of either of the said last mentioned misdemeanors, it shall and may be lawful for such justice or justices, before whom such person or persons was or were convicted, to cause such merchandizes, goods, stores, or things, to be deposited in the custody of the churchwardens or overseers of the poor of the place where they shall have been so first deposited as aforesaid (who are hereby required to receive the same) or in any other convenient place, for any time not exceeding thirty days; and to order such churchwardens and overseers of the poor, or one of them, if the same shall happen to be in any of the parishes or places within the bills of mortality, to insert immediately an advertisement in some publick news paper; and if the same shall happen to be in any other parish or place, to cause notice to be immediately given by some publick cryer, and by affixing on the church or chapel door, a notice in writing, describing such merchandizes, goods, stores, or things, and where the same shall have been so deposited, to the end that persons having lost any such, or any reputable person on their behalf, may come and claim the same, within thirty days from the time of giving and affixing such notice as aforesaid; and in case any person or persons do or shall, within

Where persons shall be convicted of either of the last-mentioned misdemeanors, the justice may cause the goods to be deposited with the churchwardens, &c. who are to advertise the same, if within the bills of mortality; and if not, notice is to be given by the public cryer, and also affixed on the church or

chapel door, within the space of such thirty days, prove his, her, or their property in that the owners may come and make their claim, within 30 days; and they proving their property therein, the justice shall order restitution thereof, upon their paying reasonable charges, and compensation to the persons giving information; but if no such proof be made, the goods, &c. shall be sold by the churchwardens; and the money, after deducting the charges aforesaid, is to go, one moiety to the informer, and the other to the poor of the parish.

Persons to whom any stores or ship goods, &c. suspected to be stolen, &c. *Sect. 9.* "And be it further enacted by the authority aforesaid, That every person to whom any goods, stores, or things belonging to ships or vessels shall be brought and offered to be sold, pawned, or delivered, shall, and he or she is hereby impowered and required (there being reasonable cause to suspect that such merchandizes, goods, stores, or things were stolen, or unlawfully come by, from or out of any ship or vessel in the said river) to apprehend, secure, and carry before a justice of the peace for the county, city, division, liberty, or place, where the same shall be so brought or offered, the person or persons so bringing or offering the same, and in the mean time to secure such merchandizes, goods, stores, or things; and such person or persons so apprehended shall be dealt with, and such merchandizes, goods, stores, or things, shall be deposited and disposed of, in the same manner as if he, she, or they had been apprehended by the constable, headborough, beadle, or watchman as aforesaid.

Persons to whom any stores or ship goods, &c. suspected to be stolen, &c. shall be offered to be sold, pawned, or delivered, may stop the same, and carry the parties before a justice; and the goods shall be deposited and disposed of; and the parties dealt with as if they had been apprehended by the constable, &c.

Persons adjudged guilty of any of the misdemeanors aforesaid, forfeit for the 1st offence 40 s. and for the 2^d and every subsequent offence 4 l. to *Sect. 10.* "And be it further enacted, That every person deemed and adjudged guilty of any of the misdemeanors aforesaid, shall, for every such misdemeanor forfeit, for the first offence the sum of forty shillings; for the second offence the sum of four pounds, and for every subsequent offence the sum of four pounds; all which said respective forfeitures shall and may be levied by distress and sale of the goods and chattels of every such offender (rendering to him, her, or them the overplus, after charges of the said distress and sale deducted) by warrant under the hand and seal,

or hands and seals, of any one or more of such justice or justices before whom such offender was convicted; which forfeiture shall be paid, one moiety thereof to the person apprehending such offender or offenders, or giving information as the case shall be, and the other moiety thereof to the said master, wardens, and assistants of the said corporation, to be distributed among the poor decayed seamen and their widows under the care of the said corporation; and if the said respective forfeitures shall not be paid, nor sufficient distress shall be found whereon to levy the same, then the said justice or justices shall and may commit every such offender so convicted as aforesaid to the common gaol or other prison or house of correction within his or their jurisdiction, without bail or mainprize, for the space of one month for the first offence, and for the second offence for the space of two months, and for every subsequent offence, until such offender shall be discharged by order of the court of general or quarter sessions. offence one month; for the second two months; and for every other offence, till discharged by the order of court of sessions.

be levied by distress and sale; one moiety to go to the apprehender or informer, and the other to the master of the Trinity-house for the use of their poor; and for want of distress, the offender to be committed, for the first

Sec. 11. " And be it further enacted, That every conviction of any offender in any of the said misdemeanors shall be certified by the justice or justices of the peace making the same, to the next general or quarter session of the peace, to be filed and entered amongst the records of the said session; and that such conviction shall and may be drawn up on parchment, and certified as follows (that is to say)

Convictions to be certified to the next quarter sessions, and filed there.

Middlesex, } **B**E it remembered, That on the Day of
to wit. } in the year A. B. was convicted before
of the justices of the peace for the county, city, division, liberty, or place aforesaid (as the case shall be) of a misdemeanor in one or more of the instances before mentioned, specifying the same particularly in the words by which the same is or are described in and by this act, or in any other form of words to the like effect.

Form of conviction.

Given under our hand and seal the day and year aforesaid.

Which said conviction, in the same or the like form of words, shall be good and effectual in law, to all intents and purposes, and shall not be quashed, set aside, or be adjudged void or insufficient for want of any other form or words whatsoever; nor be liable to be removed by *Certiorari* into his majesty's court of King's Bench, but shall be deemed and taken to be final to all intents and purposes whatsoever.

Convictions not to be quashed for want of form; nor removeable by *Certiorari*.

Sec. 12. " And be it further enacted by the authority aforesaid, That from and after the twenty-fourth day of June, one thousand seven hundred and sixty-two, every person who shall buy or receive any part of the cargo or loading of, or any goods, stores, or things, of or belonging to, any ship or vessel in the said river, knowing the same to be stolen or unlawfully come by; or shall privately buy or receive any such goods, stores, or things, or any part of such cargo or loading, by fastening any door, window, or shutter to be left open or unfastened between sun-setting and sun-rising for that purpose, or shall buy or receive the same, or any of them,

Persons convicted of knowingly buying or receiving stolen goods from vessels in the river; or of privately buying or receiving at them, any time an

such goods them, at any time, in any clandestine manner, from any person or persons whomsoever, shall, being thereof convicted by due course of law (although the principal felon or felons, offender or offenders, has or have not been convicted of stealing or unlawfully procuring the same) be transported for fourteen years to any of his majesty's colonies or plantations in *America*, according to the laws in force for the transportation of felons. If the goods are left open or unfastened for that purpose; shall be transported for 14 years.

Persons convicted of cutting or spoiling any cordage, cable, buoys, buoy-ropes, head-fast, or other fast, of vessels, at anchor or moorings, in the river, with intent to steal the same, shall be transported, together with their aiders therein, for seven years.

Secl. 13. "And be it further enacted by the authority aforesaid, That if any person or persons shall cut, damage, or spoil, any cordage, cable, buoys, buoy-rope, head-fast, or other fast, fixed to any anchor or moorings belonging to any ship or vessel at anchor or moorings in the river *Thames*, or any rope used for the purpose of mooring or rafting masts or timber, or shall be aiding or assisting therein, with an intent to steal the same; such person or persons shall, being convicted thereof on the oath of two or more credible witnesses, be transported to some of his majesty's plantations in *America* for the space of seven years, according to the laws now in force for the transportation of felons.

Any person out of prison concerned in stealing or unlawfully receiving goods or merchandise from any vessel in the river, who shall discover and convict two others of the like offence, shall be intitled to his majesty's pardon.

Secl. 14. "And be it further enacted by the authority aforesaid, That if any person being out of prison, shall, after the twenty fourth day of *June*, one thousand seven hundred and sixty-two, by stealing, or unlawfully receiving, any part of any cargo or lading of, or any goods, stores, or things belonging to, or out of, or from, any ship or vessel in the said river, and shall afterwards discover two or more persons who shall have bought or received any stolen or unlawfully procured goods, stores, or things, or any part of any cargo or lading of, or belonging to, or by, things, or out of, any ship or vessel in the said river, after the twenty-fourth day of *June*, one thousand seven hundred and sixty-two, knowing the same to be stolen or unlawfully procured, so as two or more of the persons discovered shall be convicted of such buying or receiving; every person so discovering, shall have and be intitled to the gracious pardon of his majesty, his heirs and successors, for all such felonies by him or her committed at any time or times before such discovery made; which pardon shall be likewise a bar to any appeal brought for such felony.

Persons rowing or navigating such boats, not being entered, marked, and numbered according to the order of the Trinity company; or having a false or fictitious number or mark,

Secl. 15. "And be it enacted by the authority aforesaid, That if after the publication of any such orders, rules, and regulations, by the said master, wardens, and assistants, any person or persons shall row or navigate, within the limits aforesaid, any such boat as is herein before directed to be entered, marked, and numbered, not being so entered, marked, and numbered, as aforesaid; or having a false mark or number, or not having the real name or names, and places of abode of the owner or owners of such boat inscribed thereon, or not having such names and figures kept fair and legible, in such manner as shall have been directed and required, from time to time, by such orders, rules, and regulations; in each of the cases aforesaid, every such person, being thereof convicted before one or more justice or justices of the peace of any county, city, division,

division, liberty, or place, near or adjoining to the said river, upon his or her own confession, or the oath of one or more credible person or persons, shall, for every such offence, forfeit and pay the sum of forty shillings; one moiety whereof to be paid to the person or persons who shall give information of, and prosecute to conviction, such offender or offenders as aforesaid, and the other moiety to the said master, wardens, and assistants of the said corporation, to be applied by them as aforesaid: and it shall and may be lawful for any person or persons, upon discovery of any such offence or offences, to seize and detain any such boat, with all the tackle, apparel, and furniture thereunto belonging; and shall thereupon, within the space of forty-eight hours after such seizure made, give information thereof, and of the nature of the offence, to any one or more justice or justices of the peace as aforesaid, who shall proceed to hear, and shall determine, as soon as conveniently may be, upon such information; and if such forfeiture shall not be paid within the space of twenty-four hours after conviction, then the same shall be raised by sale of the said boat, and her tackle and appurtenances; and every justice of the peace, within his jurisdiction, is hereby authorized and required to issue his warrant under his hand and seal, directed to the constable, or some other peace officer of the parish or place in which such boat, so seized as aforesaid, shall be detained, to cause sale to be made thereof, and all her tackle and appurtenances, with all convenient speed, for raising the money forfeited for the said offence as aforesaid, rendering to the offender or offenders the overplus (if any there shall be) after deducting the charges of detaining and selling such boat.

forfeit, on conviction before a justice, 40s. One moiety to the informer, and the other to the Trinity company for the use of their poor. Upon discovery of such offence, the boat and tackle, &c. may be seized, and within 48 hours after information is to be given to a justice, who is to hear and determine thereupon. If the forfeiture be not paid within 24 hours, the same shall be raised by sale of the boat, &c. by warrant of the justice.

Sec. 16. " And be it further enacted by the authority aforesaid, That the said master, wardens, and assistants, shall and may, and they are hereby authorized and required, on any complaint to be made to them by any credible person or persons, of any thefts, robberies, frauds, or other illegal practices being carried on, or reasonably suspected to be carried on, in any boat so to be numbered and marked as aforesaid, to summon the owner or owners thereof to appear before them, or any five or more of them, at the *Trinity House* in *Water-lane*, or other usual place of meeting appointed or to be appointed, at such time as they shall appoint; at which time and place the said master, wardens, and assistants, or any five or more of them, shall inquire into the said complaint in a summary way; and in case the said complaint shall be proved to their satisfaction, and they shall so think fit, they the said master, wardens, and assistants, or any five or more of them, being a majority of the members then present, may thereupon take away and totally abolish the said number so given to the said boat as aforesaid; and also may, for the future, refuse to enter, as before directed, any boat of or belonging to such owner or owners; any thing herein before contained to the contrary notwithstanding.

Upon complaint to the master and wardens of the company, of any thefts or illegal practices being carried on in any boat, or suspected to be carried on, they may summon the owner to appear, and inquire into such complaint in a summary way; and, on conviction, may take away his number, and refuse to enter any boat of his for the future.

Where, on conviction, the forfeiture of a boat, &c. is incurred, and no further provision made concerning the same, the justice by his warrant, may order the same to be burnt within 6 days.

Sett. 17. " And be it enacted by the authority aforesaid, That where any person or persons shall be convicted of any offence against this act, by which is incurred the forfeiture of any boat, with her tackle and appurtenances, and concerning which, after such conviction, no provision is hereby made, it shall and may be lawful to and for such justice or justices of the peace, before whom such conviction shall be had, or any other justice or justices of the peace of and for any county, city, division, liberty, or place, adjoining to the said river *Thames*, on conviction had, and they are hereby respectively authorized and required, to cause such boat with her tackle and appurtenances, to be totally burnt and destroyed, within six days next after such conviction as aforesaid, by warrant under the hand and seal, or hands and seals of such justice or justices, directed to the constable or other peace officer of the parish or place adjoining to the said river, or where such conviction shall be had; which said constable, or other peace officer, shall thereupon cause such boat, tackle, and appurtenances, to be so burnt and destroyed, within the time aforesaid.

Any persons may apprehend an offender,

and deliver him over to a constable,

to be carried before a justice.

Persons obstructing the execution of this act, being convicted at the quarter sessions, shall be transported for seven years.

Sett. 18. " And be it enacted by the authority aforesaid, That it shall and may be lawful for any person or persons, by the authority of this act, and without any other warrant, to apprehend any offender or offenders committing any of the offences herein before mentioned, and intended by this act to be redressed, and, with all convenient speed, to convey or deliver every such offender or offenders to a constable or some other peace officer of the county, city, division, liberty, or place, in or near to which the offence shall be committed, or the offender or offenders shall be apprehended, in order to be conveyed before some justice of the peace of such county, city, liberty, or place, there to be dealt with according to law.

Sett. 19. " And be it enacted by the authority aforesaid, That in case any person or persons acting in the execution of any of the powers granted by this act, shall be obstructed therein, every person so obstructing, and all such as shall act in their assistance, shall, on being thereof convicted before the justices of the peace, at the general or quarter session of the county or city adjoining to the said river, upon the oath of two or more credible persons, be transported to any of his majesty's plantations in *America*, for the space of seven years according to the law or laws now in force for the transportation of felons.

Any member of the corporation, or inhabitant of the place, where the offence is committed, may be admitted to give evidence.

Sett. 20. " And be it further enacted by the authority aforesaid, That in all actions, suits, trials, and other proceedings, which shall or may be had in pursuance of this act, or in relation to any matter or thing herein contained, any member of the said corporation, or any inhabitant of the parish, town, or place, in which any offence shall be committed, contrary to the true intent and meaning of this act, or wherein any conviction shall be made pursuant hereto, shall be admitted to give evidence, and shall be deemed a competent witness, notwithstanding his being such member of the said corporation, or his or her being such inhabitant as aforesaid.

Sett.

Sett. 21. " And be it also enacted by the authority aforesaid, That in all cases where an oath is by this act directed to be taken by any person or persons, it shall and may be lawful for any one or more justice or justices of the peace within the county, city, division, liberty, or place where the matter to be sworn to shall arise, and he or they is and are respectively hereby authorized and required to administer the same, without fee or reward. Justices to administer oaths gratis.

Sett. 22. " And be it further enacted by the authority aforesaid, That if any action or suit shall be commenced or brought against any justice or justices of the peace, or the said master, wardens, and assistants, or any of them, or other officer or person whatsoever, acting in the execution of any of the powers in them hereby vested, for doing, or causing to be done, any thing in pursuance of this act, concerning any of the said offences, the same shall be laid in the county of *Middlesex* or city of *London*, and not elsewhere; and shall be commenced within six months next after such cause of action accrued; and the defendant or defendants therein may plead the general issue, and give this act, and the special matter, in evidence, at any trial to be had thereupon, and that the same was done in pursuance and by the authority of this act: and if it shall appear so to have been done, or that such action or suit was brought after the time before limited, or in any other place; that then the jury shall find for the defendant or defendants; and if upon such action a verdict shall be given for the defendant or defendants; or if the plaintiff or plaintiffs shall become nonsuited, or discontinue his, her or their action or suit, after the defendant or defendants shall have appeared; or if, upon demurrer, judgment shall be given against the plaintiff or plaintiffs, then the defendant or defendants shall and may recover treble costs, and have such remedy for the same, as any defendant or defendants hath or have in any case by law. Limitation of actions. General issue. Treble costs.

Sett. 22. " And be it further enacted by the authority aforesaid, That this act shall be deemed, adjudged, and taken to be a public act; and be judicially taken notice of as such, by all judges, justices, and other persons whomsoever, without the same being specially pleaded." Public act.

Of what Nature the Things stolen must be to constitute the Offence, Felony.

Here it may be proper to take notice, that in the times of the military tenures every tenant was obliged to attend in the camp; and there being no provision made out of the publick stock for them, as there is now-a-days for our mercenary soldiery, it was necessary for every freeman to carry with him his-own provision; which obliged them to a very severe and rigid justice upon all persons who should violate any man's property; otherwise camps would have been scenes of intolerable violence, and every man would have perished by his neighbour's sword, and not by his enemies. Hence they learned the institution of punishing theft by death, and from thence they derived it into their civil state, which consisting of

the same orders and conditions of men, it was necessary that the same measures of justice should be used both at home and in the camp; for they could not understand that a freeman should be punished otherwise in the camp than in the civil state, as they thought justice was the same, and could not alter with the distinction of countries and places; and therefore it is that in this punishment our law differs from the *Roman* and *Mosaic* law, which only obliged those sort of offenders to the restitution of four-fold, and custom hath approved the method; for should we admit a restitution from such profligate offenders, we should have no end of rapine and violence. *S. P. C.* 25. See *Exod.* xxii.

Hence we have the reason of the distinction between the real and personal property, and why our common law does not punish the stealing of corn or grass growing, or apples on a tree, or lead on a church or house with death, because these never came under the camp discipline; and therefore it was not necessary to guard this sort of property with such sanguinary laws, where the redress may be by a civil action. *12 Aff.* 32. *Bro. Coron.* 77. *Crompt.* 37. *S. P. C.* 25. *b.* 1 *Mod.* 89. *Allen* 83. 2 *Keb.* 875. 1 *Vent.* 187.

But if they are severed from the freehold, whether by the owner, or even by the thief himself, if he sever them at one time, and then come again at another time, and take them, this is felony. 1 *Vent.* 187. 1 *Hawk. P. C.* 93.

If a man take away a box of charters, this is not felony, because they are the muniments of the freehold, and relate to the estate at home, and not to the provisions that were used in supplying the camp abroad. 3 *Inst.* 109. *H. P. C.* 66.

But it is said, in *Hale*, to be felony to take away an obligation for money, and the reason hereof may be, because securities might be taken to answer money at the camp from a neighbouring freeholder, and therefore there was the same reason they should be within this provision, as that other chattels should be protected by the obligations being equally valuable. *H. P. C.* 67.

But *per Hawkins*, the things taken ought to have some worth in themselves, and not to derive their whole value from the relation they bear to some other thing, which cannot be stolen, as paper or parchment, on which are written assurances concerning lands or obligations, or covenants, or other securities for debt or other chose in action; and the reason, he says, wherefore there can be no felony in taking away any such thing, seems to be, because, generally speaking, they being of no manner of use to any but the owner, are not supposed to be so much in danger of being stolen, and therefore need not be provided for in so strict a manner, as those things which are of a known price, and every body's money; and for the like reason, it is no felony to take away a villain or an infant in ward. 1 *Hawk. P. C.* 93. But now, see *stat.* 2 *Geo.* 2. *c.* 25. under title **forgery**.

It is also from the strict discipline, that was observed in the camp, that the distinction is raised concerning beasts that are *feræ naturæ*; for those that

that are for the provision of a man, when reclaimed, are within the protection of the law; and it is felony to steal them, because these answered the use of the camp for their necessary food and sustentation; but dogs, cats, bears, foxes, monkeys, ferrets and the like, that are not used for provision, may be stolen without any danger of death, for they are not within the inconveniency for which the law was provided. *H. P. C.* 66. 7 Co. 18. 1 *Hawk. P. C.* 93.

But to steal hawks reclaimed is felony, because they were used for the entertainment of noble and generous persons, and were carried into the camp for diversion there; and therefore were construed within the same provision. 3 *Inst.* 109.

Wherever it is felony to steal beasts, it is so in relation to the young beasts, because they by right of accession follow the condition of the dams. 3 *Inst.* 109.

How far the goods ought to belong to another, and what shall be deemed a felonious and fraudulent taking, and carrying away.

The taking of goods, whereof no one had a property at the time, cannot be felony; and therefore he who takes away treasure trove, or a wreck, waif or stray, before they have been seized by the persons who have a right thereto, shall only be punished by fine, &c. 3 *Inst.* 109. *H. P. C.* 67. 1 *Haw. P. C.* 93.

If one takes fish in a river, or other great water, wherein they are at their natural liberty, he is not guilty of felony; but he who takes them out of a trunk or pond is guilty of felony, because being thus secured, the party hath the dominion of them. *Owen* 20. 3 *Inst.* 109. *H. P. C.* 97.

And for this reason there can be no doubt but that the taking of domestick beasts, as horses, mares, colts, &c. or of any creatures whatsoever, which are *domitæ naturæ*, and fit for food, as ducks, hens, geese, turkeys, peacocks, or their eggs, or young ones, is felony. *H. P. C.* 68. 3 *Inst.* 109. 1 *Haw. P. C.* 94.

But a person who takes any creatures, though *feræ naturæ*, if they be fit for food, and reduced to tameness, and known by him to be so, is guilty of felony; also by the better opinion, it is felony to steal wild pigeons in a dove-house shut up, or hares or deer in a house, or even in a park, inclosed in such a manner, that the owner may take them whenever he pleases, without the least danger of their escaping; in which case they are as much in his power, as fish in a pond, or young pigeons, or hawks in a nest, &c. the taking of which seems agreed to be felony. 3 *Inst.* 109. 7 Co. 17. *H. P. C.* 86. 1 *Haw. P. C.* 94.

Also the taking away swans marked or pinioned, or those which are unmarked, if kept in a pond or private river, is felony. *H. P. C.* 68. 1 *Haw. P. C.* 94.

Also it is said, that there may be felony in taking goods, the owner whereof is unknown; in which case the king shall have the goods, and the offender shall be indicted for taking *bona cujusdam hominis ignoti*; and

it seems, that in some cases, the law will rather feign a property, where in strictness there is none, than suffer an offender to escape; and therefore it is said, that he who takes away the goods of a chapel or abbey in time of vacation, may be indicted in the first case for stealing *bona capelle*, being in the custody of such and such; and in the second, for stealing *bona domus & ecclesiæ*, &c. and a *fortiori* therefore it follows that he who steals goods belonging to a parish church, may be indicted for stealing *bona parochianarum*; and it hath been adjudged, that he who takes off a shroud from a dead corps, may be indicted, as having stolen it from him, who was the owner thereof when it was put on, for a dead man can have no property. 1 *Haw. P. C.* 94.

There is also a special case, in which a man may be guilty of felony in stealing goods, the absolute property whereof is in himself; as where one who has delivered goods to a carrier or taylor, &c. afterwards with an intent to charge such carrier or taylor, fraudulently and secretly takes them away. *Cro. Eliz.* 536. *McCr.* pl. 981. *Keilw.* 70.

To constitute an offence felony, it is not sufficient that there be a fraud and intent to steal, unless there be also a taking, for all felony includes trespass, and every indictment for larceny must have both the words *cepit & asportavit*; and therefore if there be no trespass in taking the goods, there can be no felony in carrying them away. *H. P. C.* 61. 1 *Hawk. P. C.* 89.

Therefore if a person finds goods, and converts them to his own use, *animo furandi*, yet he is not guilty of felony. 3 *Inst.* 103. *H. P. C.* 61.

So if a person who has a limited property in the goods, as one who has goods delivered to him to keep, a carrier who has a box delivered to him to carry to a certain place, or a taylor who has cloth delivered to him to make into a suit of cloaths; for here the party injured must seek redress by civil action, and must abide the folly of his own act in placing confidence in the person who was guilty of the breach of trust. *S. P. C.* 25. a. 3. *Inst.* 108.

But though if I send a box to the carrier, and the carrier sells it, this is not felony; yet if the box be broke open, and the goods in it carried away, it is felony; for he hath property in the box to carry it to the place appointed, but he hath no property in the goods in the inside, for that I have reserved in my own power, having locked it up out of the power of the carrier to whom it is sent; for no man hath property that is shut out from the command of the thing to which he pretends; so if a carrier carries the goods to the place, and then steals them, this is felony; because the property is determined when the goods are come to the place appointed; besides, it is for publick convenience that the inside of the box should be thus secured; otherwise the carrier might steal the things contained in the box, and yet deliver the box itself, which would not be of very easy discovery. *S. P. C.* 25. a. *Kelyng* 35. 1 *Rol. Abr.* 73.

He who hath the bare charge of goods, as a shepherd has of sheep, or a butler of plate, or that has only the special use of goods, as a guest in an inn, and not the possession, may be guilty of larceny, in fraudulently taking

taking them away, for the offence comes as properly under the word *cepit*, and the fraud is as secret, and the villainy more base than if it had been done by a stranger. *Moor* 246. *Popb.* 84. 1 *Haw. P. C.* 90.

If he who intending to steal goods, obtains a delivery of them from the sheriff, by virtue of a replevin, or by way of execution of a judgment obtained by imposition on a court, without any colour of title, by false affidavits, &c. he may be indicted as having feloniously taken them; for the law will not indure to have its justice eluded by such shameful evasion. 3 *Inst.* 108. *H. P. C.* 63. *Kelyng* 43. 1 *Sid.* 254. *Raym.* 276.

Also, he who steals goods from one who had stole them from me, may be indicted as having stolen them from me; because in judgment of law both the possession and property of them was always in me; and for this cause, he that steals goods in the county of *A.* and carries them into that of *B.* may be indicted in either. 1 *Haw. P. C.* 90.

It was formerly a doubt, whether a lodger, by reason of the special property he had in the furniture of his lodgings, could be guilty of felony in taking them away; but now by the 3 & 4 *W. & M. cap.* 9. it is enacted, That if any person or persons shall take away with an intent to steal, imbezil, or purloin any chattel, bedding or furniture, which by contract or agreement he or they are to use, or shall be let to him or them to use in or with such lodging, such taking, imbeziling or purloining, shall be to all intents and purposes taken, reputed and adjudged to be larceny and felony, and the offender shall suffer as in case of felony. *Kelyng* 24. 1 *Show.* 50, 57. 1 *Haw. P. C.* 91.

Altho' the word *asportavit* be necessary in every indictment for this species of felony, yet the felony lies in the very first act of removing the property; for if the felon be caught in the act of carrying the goods away before he is out of the house, it is felony; for the act of the mind declared by subsequent facts makes the crime. 3 *Inst.* 108. 2 *Vent.* 215. 1 *Hawk. P. C.* 92.

Hence it hath been adjudged, that where a guest having taken off the sheets from his bed with an intent to steal them, carried them into the hall, and was apprehended before he could get out of the house, was guilty of larceny. 3 *Inst.* 109. *Dalt. c.* 102. 1 *Haw. P. C.* 92.

So where a person having taken a horse in a close, with an intent to steal him, was apprehended before he could get him out of the close. 3 *Inst.* 109.

So if a person pulls off the wool from another's sheep, or strips their skins with an intent to steal them, he is guilty of felony. *Crom.* 36.

Also where a person intending to steal plate, took it out of a trunk, wherein it was, and laid it on the floor, but was surprized before he could carry it away; and it was adjudged felony. *Kelyng* 31.

Where the Offender is or is not excluded his Clergy, or is to be transported.

By the common law, a person guilty of any crime, which subjected him to the loss of life or member, was allowed his clergy, except in high

high treason and sacrilege. 11 Co. 29. 2 Inst. 634. See 2 Hawk. P. C. 337, &c.

And therefore it may be laid down as a good general rule, that where ever a person is denied the benefit of his clergy, as he is in petit treason, murder, robbery, burglary, arson, &c. that such denial must be grounded on some act of parliament, which excludes him from the benefit of it. H. P. C. 232. 2 Hawk. P. C. 342.

It is also a general rule, that where an offence is made felony by statute, it shall have the benefit of clergy, unless expressly excluded. 2 Hawk. P. C. 342.

So where a person is denied the benefit of the clergy in respect of a statute excluding it from the crime charged against him, the indictment or appeal, and the evidence thereon, must expressly bring his case within the words of such statute. 2 Hawk. P. C. 342.

A statute, by excluding principals from their clergy, doth not thereby exclude the accessaries before or after, & *sic e converso*, and a statute generally excluding those who shall be found guilty of murder, robbery, or burglary, or other crime, without saying any thing of accessaries, shall be construed to intend principals only. 2 Hawk. P. C. 342.

Where clergy is allowable, those who stand mute, or challenge above twenty, or are outlawed, are as much intitled to it, as those who are convicted. 2 Hawk. P. C. 343.

Also a statute, by taking away clergy from those who shall be found guilty, doth not thereby take it from those who stand mute, or challenge above twenty, or are outlawed; but a statute taking it from those who shall be found guilty, extends as well to those who shall confess themselves guilty upon record, as to those who shall be found guilty by verdict. 2 Hawk. P. C. 343.

But see the several statutes, by which the benefit of clergy is taken away from this offence, or where the offender is to be transported, from page 6 to page 35. And see title Transportation.

Leather.

For the duties on Leather, see Excise.

STAT. 1. Jac. 1. c. 22. [A. D. 1603, intituled] "An act concerning tanners, curriers, shoemakers, and other artificers occupying the cutting of leather."

Enforced by
9 Annæ, c. 11.
f. 10.

The duty of
tanners, cur-
riers, shoe-
makers, and
of others cut-
ting of lea-
ther.

The causes
that former
statutes made
against the
abuses of tan-
ners, curriers,
&c. have not
been per-
formed.

27 H. 8. c. 14.
5 & 6 Ed. 6.

c. 15.
1 Ma. sess. 3.
c. 8.

5 El. c. 22.
8 El. c. 14.

18 El. c. 9.
2 Salk. 609.
Mod. cases in
law 62.

The penalty
for gashing or
watering of a
hide, or sell-
ing a rotten
hide.

"Whereas the laws and statutes formerly established and made for the true and just tanning, currying, and working of leather, have not taken that good effect which was expected, as well for that divers of the said statutes did not sufficiently provide for the redress of those deceits and abuses which have been, and are commonly practised by the tanners, curriers, and workers of leather; (2) as for that other of the same statutes have been too sharp and rigorous, tying and binding the persons occupying the several mysteries or trades aforesaid, to divers inconveniences, and sundry matters and things impossible for them to perform; by reason of which too much strictness and rigour, the same statutes have not been put in execution, but have been in effect wholly dispensed withal: (3) to the intent therefore that a reasonable and indifferent course for the true and well tanning, currying and working of leather, may be from henceforth established and appointed, and yet the persons using and occupying the several crafts and mysteries aforesaid, may not be further or more strictly bound, restrained or limited, than the necessary regard of the commonwealth, and general commodity of all sorts of subjects within this realm requireth.

SECT. 2. "Be it enacted by the king's most excellent majesty, the lords spiritual and temporal, and commons of this present parliament assembled, and by the authority of the same, That from and after the feast of *St. Bartholomew* the apostle next coming, no butcher by himself, or by any other person, shall gash, slaughter or cut any hide of any ox, bull, steer, or cow, in slaying thereof, or otherwise, whereby the same shall be impaired or hurt, upon pain of forfeiture for every hide so gashed, slaughtered and cut, twenty pence. (2) And that no butcher shall water any hide, except only in the months of *June*, *July*, and *August*, nor shall offer or put to sale any hide being putrified or rotten, upon pain of forfeiture for every such hide so watered, and for every hide so putrified and rotten, and offered or put to sale, three shillings and four-pence.

SECT. 3. "And be it further enacted by the authority aforesaid, That no butcher or other person or persons, after the feast of *St. Bartholomew*, next coming, shall kill any calf to sell, being under five weeks old, upon pain to forfeit for every calf so to be killed and sold, six shillings and eight-pence.

Killing of
calves under
five weeks
old.

Repealed by
22 & 23 C. 2.

No butcher
shall be a tan-
ner.

Who may be
a tanner.

No tanner
shall be a cut-
ter of leather.
Cro. Car.
587.

Who may
buy rough-
hides, or
calves-skins.

Forestalling
of hides.

Seet. 4. “ And be it further enacted by the authority aforesaid, That no person or persons occupying the craft or mystery of a butcher, shall after the feast of *St. Bartholomew* the apostle next coming, occupy or use by himself, or any other person or persons, the feat, craft or mystery of a tanner, during the time that he shall use the craft or occupation of a butcher, upon pain of forfeiture of six shillings and eight pence for every day that he shall so use the feat, craft or mystery of a tanner.

Seet. 5. “ And be it further enacted by the authority aforesaid, That no person or persons shall from and after the feast of *St. Bartholomew* next coming, tan any leather, or shall use, take, or have any profit, gain or commodity, of or by the said craft or mystery of tanning of leather, except such person or persons as had a tan-house at the beginning of this present session of parliament, and did then occupy the mystery of tanning of leather; (2) and except such as have been, or hereafter shall be brought up, instructed or taught as apprentices, or covenant or hired servants for that purpose, by the space of seven years, in the mystery of tanning of leather: (3) and except the wife, and such son or sons of a tanner as hath been brought up, and hath used the mystery of tanning of leather by the space of four years, or the son or daughter of a tanner, or such person who shall marry such wife or daughter, to whom he hath, or shall leave a tan-house and fats; (4) upon pain of forfeiture of all such leather by him or them so tanned, or whereof he or they shall receive any profit or commodity by tanning, or the just value thereof.

Seet. 6. “ And be it further enacted by the authority aforesaid, That no person or persons using the mystery of tanning of leather by himself, or by any other person or persons, from and after the said feast of *St. Bartholomew*, shall, during the time that he shall use the said mystery, occupy or use the craft or mystery of a shoemaker, currier, butcher, or of any other artificer, using or exercising cutting or working of leather; (2) upon pain to forfeit and lose all and every such hide and hides, skin and skins so by them or any of them wrought or tanned, during the time that he shall use the mystery or craft of tanning aforesaid, or the just value thereof.

Seet. 7. “ And be it further enacted by the authority aforesaid, That no person or persons after the feast of *St. Bartholomew* next coming, shall bargain, buy, make any contract for, or bespeak any rough hide, or calve-skin in the hair, but only such person or persons as by virtue of this act may lawfully use the craft or mystery of tanning of leather, and shall tan the same, or such person or persons which shall tan the same, (except salt-hides for the necessary use of ships); (2) upon pain to forfeit and lose all and every such hides and skins so bought, or the just value thereof: (3) and that no tanner or other person or persons, shall forestall any hides coming towards any fair or market, nor shall buy any hide any other where than in an open fair or market, unless it be of such person or persons as shall kill the same beast whereof the said hide shall be, for the provision of his or their own house or houses; (4) upon pain of

of forfeiture for every hide so forestalled or bought, contrary to the true meaning of this present act, six shillings and eight pence.

Sec. 8. " And be it further enacted by the authority aforesaid, That no person or persons shall or may after the feast of the nativity of our Lord God next coming, buy, sell, bargain, bespeak, or take promise to have, exchange, or put away any tanned leather, not wrought and converted into made wares, but only such person and persons as will and shall work and convert the same leather into made wares, upon pain of forfeiture of the leather so bought, sold, exchanged, or put away, or the value thereof.

Who may
buy tanned
leather not
wrought.

Sec. 9. " Provided always, and be it enacted by the authority aforesaid, That all and every artificer, and other person or persons using to convert tanned leather into made wares, as well strangers born, as others, may lawfully buy all kind of tanned leather, to make or convert the same into made wares; at *Leaden-Hall* in *London*, upon every *Monday*, the same being first duly searched, sealed and registered, as is hereafter limited.

Buying leather at *Leaden-hall* in *London*.

Sec. 10. " Provided also, That the sadlers and girdlers may sell their necks, shreds of tanned leather red, without incurring any pain or forfeiture for the same.

Sadlers and girdlers may sell their necks, &c.

Sec. 11. " And be it further enacted by the authority aforesaid, That after the feast of *St. Bartholomew* next coming, no person or persons whatsoever, which shall after the said feast occupy or use by him or themselves, or by any other person or persons, the craft or mystery of tanning of leather, shall suffer any hide or skin to lie in the limes till the same be over-limed, nor shall put any hides or skins into any tan fats, before the lime be well and perfectly fokened and wrought out of them, and every of them; (2) nor shall use, employ, occupy, or put by themselves, or by any other person or persons, any thing or stuff in or about the workmanship or tanning of leather, but only ash-bark, oak-bark, tapwort, malt, meal, lime, culder-dung, or hen-dung; (3) nor shall willingly suffer his or their leather to be laid, or to hang, or to lie wet in any frost, until the same be frozen; (4) nor shall dry or parch the said leather with the heat of the fire, or of the summer-sun; (5) nor shall tan, or cause to be tanned any hide or skin being putrified or rotten by long lying, either before the putting of it into the limes, or after in the water or liquor, or by any other means: (6) nor suffer the hides for utter sole-leather to lie in the woozes any less time than twelve months at the least: (7) nor the hides for upper-leathers in the like woozes any less time than nine months at the least: (8) nor shall negligently work the hides in the woozes, but shall renew and make strong their woozes, as often as shall be requisite: (9) nor shall after the said feast of *St. Bartholomew*, put to sale any tanned hide or skin, which shall be after the said feast wrought and tanned in any other sort than by this statute is limited and appointed; (10) upon pain of forfeiture of every ox-hide, bull-hide, steer-hide, cow-hide, or skin tanned or wrought, and offered to be put to sale, contrary to the true meaning of this present act, or the just value thereof.

How hides shall be used in tanning.

Sett. 12. " And forasmuch as much damage hath redounded to the commonwealth, by reason that divers tanners for their private lucre have used to convert to sole-leather such hides as are altogether insufficient for that use; which hides they do raise in the workmanship by divers mixtures, thereby making the same to seem very strong and substantial leather, whereas the same doth in the wearing prove hollow, deceitful, and altogether unprofitable for the commonwealth :

Raising of
hides with
mixtures.

Sett. 13. " Be it enacted by the authority aforesaid, That no person or persons, using, or which hereafter shall use the craft or mystery of tanning of leather, shall after the feast of Saint *Bartholomew* next coming, raise with any mixtures any hide, to be employed and converted to backs, bend-leather, clouting-leather, or any other sole-leather, except the same hides be for largeness, state and growth, fit and sufficient for that use and purpose, the same to be tried by the triers hereafter in this present act to be appointed; (2) upon pain of forfeiture of all such hides which shall be raised and converted to sole-leather, contrary to the true meaning of this present provision.

Sale of tanned
leather red
and unwrought.

Sett. 14. " And be it further enacted by the authority aforesaid, That from the feast of Saint *Bartholomew* next coming, no person or persons whatsoever, shall put, or cause to be put to sale, exchange, or otherwise depart with any kind of tanned leather red, and unwrought, but in open fair or market in the places therefore commonly accustomed, and therefore prepared, unless the same leather have been before lawfully searched and sealed in some open fair or market, or other place lawfully appointed to and for the searching and sealing of leather; (2) Nor shall after the said feast, offer to put to sale any tanned leather red and unwrought, before the same be searched and sealed according to the laws and order of this statute hereafter-mentioned; (3) upon pain of forfeiture for every hide or piece of leather so sold, exchanged, or otherwise departed with, contrary to the true meaning of this act, six shillings eight pence, and for every dozen of calves-skins or sheep-skins, three shillings four pence, and the hide or hides, skin or skins, and leather in any other wise sold, exchanged or bought, or the value thereof.

Altered by
4 Ja. 1. c. 6.
f. 2.

Leather not
sufficiently
tanned or
dried.

Sett. 15. " And be it further enacted by the authority aforesaid, That if any person or persons, using, or which shall use the mystery or faculty of tanning, shall at any time or times hereafter, offer or put to sale any kind of leather which shall be insufficiently, or not thoroughly tanned, or which shall not then have been after the tanning thereof well and thoroughly dried, so that the same by the triers of leather lawfully appointed according to this present act, for the time being, shall be found to be insufficiently, or not thoroughly tanned, or not thoroughly dried as aforesaid, That then all and every such person and persons so offending, shall forfeit and lose so much of his or their said leather as shall be found insufficiently, and not thoroughly tanned, or not thoroughly dried as aforesaid; that is to say, the whole hide, back or skin, or other piece of leather, if the whole be insufficiently or not thoroughly tanned, or not thoroughly dried: (2) And if the whole hide, back, skin, or other piece of leather

leather be not sufficiently, or not thoroughly tanned, or not thoroughly dried, then only so much of the hide, back, skin, or other piece of leather as shall be insufficiently or not thoroughly tanned, or not thoroughly dried; the same to be cut out by the oversight, discretion and direction of the triers hereafter in this act to be appointed, upon the oaths of the said triers.

Sett. 16. " And whereas divers tanners for greediness of gain, do overmuch hasten the tanning of their leather, and for that purpose do use divers crafty and subtle practices, sometime laying their leather in their fats, set in their old tan-hills, where it may be tanned in the hot woozes, taking unkind heat in the same hill, and sometimes by putting of hot woozes into their tan-fats where the same hides of leather lie, by which and other like fraudulent practices they make their leather to seem both fair and well, and sufficiently tanned, within a very short space :

Crafty means to overhasten the tanning of leather.

Sett. 17. " For reformation whereof, Be it enacted by the authority aforesaid, That after the feast of Saint *Bartholomew* next coming, no person or persons shall set their fats in tanhills, or other places, where the woozes or leather that shall be put to tan in the same, shall, or may take any unkind heats, or shall put any leather into any hot or warm woozes, or shall tan any hide, calve-skin or sheep-skin, with any hot or warm woozes whatsoever; (2) upon pain that every person so offending shall forfeit for every such offence ten pounds, and shall also for every such offence stand upon the pillory three several market-days, in the market-town next to the place where the said offence shall be committed.

Leather shall not take unkind heats.

Sett. 18. " And forasmuch as bark is of late become very dear and scarce, which happeneth partly by reason that divers persons do ingross and buy great quantities thereof, and then do sell the same again at excessive and unreasonable prices, and partly by the unseasonable felling of oak out of the barking-time :

Sett. 19. " Be it enacted by the authority aforesaid, That no person or persons shall regrate, ingross, or get into their hands by buying, contracting or promise-taking, any oaken-bark, before it be stripped, or after, to the intent to sell the same again; (2) upon pain of forfeiture of all such barks so by him or them regrated, ingrossed or bought, contrary to the true meaning of this present branch, or the full value thereof.

There shall be no regrating or ingrossing of oaken bark.

Sett. 20. " And be it further enacted by the authority aforesaid, That no person or persons shall from and after the said feast of Saint *Bartholomew* next coming, fell, or cause to be felled any oaken trees meet to be barked, where bark is worth two shillings a cart-load, over and above the charges of barking and piling, (timber to be employed to or for the necessary and needful building and reparations of houses, ships or mills, only excepted) but between the first day of *April*, and the last day of *June*, upon pain of forfeiture of every such oaken tree so felled, or double the value thereof.

At what time oaken trees to be barked shall be felled.

Sett. 21. " And for the better preservation of timber, which by the takers of timber is spoiled through the greedy desire of gain of the lops, tops, or barks of timber-trees; Be it therefore enacted by the authority aforesaid,

When perveyors shall fell timber.

*No taking of
tops.* aforesaid, That no taker or takers, purveyor or purveyors of timber, or his or their deputy or deputies, shall fell, or cause to be felled for the use of the king's majesty, his heirs or successors, any oaken timber-tree or trees meet to be barked, but in barking time, (trees to be felled for the needful and necessary building or repairing of any of his majesty's houses or ships only excepted; (2) or shall in any wise take or shall receive any manner of profit, gain or commodity by any lops, tops, or bark of any trees, to be taken by them, or any of them; (3) or shall in any wise take, carry away, give, sell, or dispose from the owner, any more of any tree to be taken as is aforesaid, than only the timber of the same tree or trees to be used and bestowed, or employed only in, upon or about the king's majesty's buildings or ships; (4) upon pain of forfeiture to the party grieved, for every tree, and for the lops, tops, and bark of every tree taken contrary to the meaning of this article, forty shillings; (5) and that it shall be lawful to the party of whom such tree or trees shall be taken, or to any other for and in his name, to take, retain, with-hold and keep to himself all the bark, lop, or top of such tree or trees, any commission or other matter whatsoever notwithstanding.

*Currying of
leather.*

Stat. 22. " And forasmuch as no leather can be so well tanned, but it may be marred in the currying, Be it therefore enacted by the authority aforesaid, That from and after the feast of Saint *Michael* the archangel, next coming, no person or persons shall curry any kind of leather in the house of any shoemaker, or other person, but only in his own house situate in a corporate or market-town; (2) nor shall curry any kind of leather, except it be well and perfectly tanned; (3) nor shall after the said feast of Saint *Bartholomew*, curry any hide or skin being not thoroughly dry, after his wet season, in which wet season he shall not use any stale urine, or any other deceitful or subtle mixture, thing, way, or means to corrupt or hurt the same; (4) nor shall curry any leather meet for utter-sole-leather, with any other stuff than with hard tallow, nor of any less of that than the leather will receive; (5) nor shall curry any kind of leather meet for over-leather, and inner-soles, but with good and sufficient stuff, being fresh and not salt, and thoroughly liquored till it can receive no more; (6) nor shall burn or scald any hide or leather in the currying; (7) Nor shall shave any leather too thin; nor shall gash or hurt any leather in the shaving, or by any other means; (8) but shall work the same sufficiently in all points and respects; upon pain of forfeiture for every such offence or acts done contrary to the true meaning of this article (other than in gashing or hurting in shaving) six shillings and eight pence, and the value of every such skin or hide marred by his evil workmanship; (9) and for every offence to be done against this article in gashing or hurting by shaving, double so much to the party grieved, as the leather shall be impaired thereby, by the judgment of the wardens of the curriers, and the warden of the company whereof the party grieved shall be.

*The currier's
forfeiture for
misusing of
leather.
2 Salk. 609.*

*Who shall
curry leather
in or near
London.*

Stat. 23. " And be it further enacted, That no cordwainer, shoemaker, or other person or persons dwelling or inhabiting within the city of *London*, or the liberties of the same, or dwelling within three miles of the said

city, and occupying wet curried leather in his art or occupation, shall put, or cause to be put any leather to be curried, but to such person or persons as be, or shall be free of the company of curriers of the city of *London*, upon pain of forfeiture of all such curried leather, or the value thereof.

Stat. 24. " And be it further enacted, That no person or persons shall by any means occupy, or put in any made wares within the city of *London*, or three miles of the same city, any curried leather, before the same shall be searched and allowed by the wardens of the curriers of *London*, for the time being, or such persons as they shall thereto assign, and be sealed with a seal therefore to be prepared; (2) upon pain that every shoemaker, and other artificer, cutter of leather, offending against this article, shall forfeit for every hide or skin otherwise curried or employed as is aforesaid, six shillings eight pence, and the value of every such hide or skin.

Curried leather shall be searched and sealed.

Enforced by 13 & 14 C. 2. c. 7. sect. 14.

Stat. 25. " And be it further enacted, That no person occupying the feat or mystery of a currier, shall use or exercise the feat or mystery of a tanner, cordwainer, shoemaker, butcher, or other artificer using cutting of leather, during the time that he shall so use or occupy the mystery of a currier; (2) upon pain of forfeiture of six shillings and eight pence for every hide or skin that he shall curry, during the time that he shall occupy or use any of the mysteries aforesaid, contrary to the meaning of this article.

A currier shall not be tanner, shoemaker, butcher &c.

Stat. 26. " And further be it enacted, That no currier or curriers shall after the said feast of Saint *Bartholomew*, refuse to curry any leather to him or them for that purpose brought, by any such artificer as is or shall be a cutter of leather, the same artificer or his servant bringing with him or them good and sufficient stuff, as is before-mentioned, for the perfect liquoring of the same leather, and that the said leather in the presence of the said artificers, cutters of leather, his servant or servants (if he or they will be present) shall be liquored and curried in all things and degrees perfectly; and if he or they will not be present, it shall nevertheless be liquored and curried in his or their absence perfectly, with as convenient speed as may be, not exceeding eight days in summer, and sixteen days in winter, after he shall or may take it in hand; (2) upon pain to forfeit to the party grieved, for every hide or piece of leather not in this manner curried, and well and speedily dressed, ten shillings.

Within what time leather shall be curried.

Stat. 27. " And be it further enacted by the authority aforesaid, That the wardens of the curriers for the time being, or such persons as they shall assign and appoint, shall from time to time, search and try all such curried leather as shall be brought to any of their company to be curried, and shall with a seal therefore to be prepared, with convenient speed, not exceeding one day after the currying and request made, seal such leather as they shall find sufficiently curried; (2) taking for every hide so sealed, after the rate of a penny for the dicker, and for every six dozen of calves-skins, one penny, and not above, to be paid by the currier; (3) upon pain of forfeiture for every hide which shall not be searched and sealed, as is aforesaid, six shillings and eight pence.

Curried leather shall be searched and sealed.

Stat.

The cord-
wainer's duty
in making of
boots, shoes,
buskins, slip-
pers, &c.

Sett. 28. " And forasmuch as leather well tanned and curried, may, by the negligence, deceit, evil workmanship of the cordwainer or shoemaker, be used deceitfully, to the hurt of the occupier or wearer thereof; (2) be it further enacted by the authority aforesaid, That no person or persons, which after the said feast of St. *Bartholomew* next coming, shall occupy the mystery or occupation of a cordwainer or shoemaker, shall make or cause to be made any boots, shoes, buskins, startops, slippers, or pantofles, or any part of them of *English* leather wet curried, (other than deer-skins, calveskins, or goat-skins, made and dressed, or to be made or dressed like unto *Spanish* leather) but of leather well and truly tanned and curried in manner and form aforesaid, or of leather well and truly tanned only, and well and substantially sewed with good thread, well twisted and made, and sufficiently waxed, with wax well rosened, and the stitches hard drawn with hand-leathers, as hath been accustomed, without mixing or mingling over-leathers; that is to say, part of the over-leather being of neats-leather, part of calves-leather; (3) nor shall put into any part of any shoes, boots, buskins, startops, slippers, or pantofles, any leather made of a sheep-skin, bull-hide, or horse-hide; (4) nor in the upper leather of any shoes, startops, slippers, or pantofles, or into the nether part of any boots (the inner part of the shoe only excepted) any part of any hide from which the sole-leather is cut, called the wombs, neck, shank, flank, powle or cheek; (5) nor shall put in the outer-foal any other leather than the best of the ox or steer-hide; (6) nor into the inner-sole any other leather than the wombs, neck, powle, or cheek, nor in the trefswels of the double-foled shoes, other than the flanks of any of the hides aforesaid; (7) nor shall make, or put to sale in any year, between the last of *September* and the twentieth of *April*, any shoes, boots, buskins, startops, slippers, or pantofles, meet for any person to wear exceeding the age of four years, wherein shall be any dry *English* leather, other than calves-skins, or goat-skins, made or dressed, or to be made or dressed like unto *Spanish* leather, or any part thereof: nor shall shew, to the intent to put to sale, any shoes, boots, buskins, startops, slippers, or pantofles, upon the *Sunday*; (9) upon pain of forfeiture for every pair of shoes, boots, buskins, startops, slippers and pantofles, made, sold, shewed, or put to sale contrary to the true meaning of this act, three shillings and four-pence, and the just and full value of the same.

No sale, or
shewing of
boots, shoes,
&c. upon the
Sunday.

Sett. 29. " And be it further enacted for the true execution of this statute, That the master and wardens of the several mysteries of cordwainers, curriers, girdlers, and sadlers of the city of *London* for the time being, by what name or names soever they be incorporated or entitled, or the more part of the said master and wardens of every the said several mysteries, upon pain to forfeit forty pounds for every year that they make default, the one half thereof to be to the king's majesty, his heirs and successors, and the other half to him or them that will sue for the same; (2) shall by virtue of this act four times in the year at the least, that is to say, once every quarter of the year, or oftner if need require, as they shall

shall think good, make true search and view of and for all boots, shoes, buskins, and other wares and things whatsoever made of tanned leather, in all and every house and houses, place and places, privileged or not privileged, as well within the city of *London* and suburbs thereof, as in every other place within three miles of the same city, where any shoemaker, sadler, girdler, currier, or other artificer using, cutting, working, or dressing of leather, doth or shall dwell, or occupy any of the occupations of cutting, working, or dressing of leather, whether the same boots, shoes, wares, stuff, and other things be made of tanned leather, and be wrought according to the purport, effect and true meaning of this statute, or not: (3) And that it shall and may be lawful to and for the the said several masters and wardens of the said several mysteries which shall be for the time being, to take, seize, and carry away to their several common halls, all such boots, shoes, wares, stuff, or other things which the said several masters and wardens shall find in their several searches insufficiently made, curried or wrought.

Wares made and tanned leather in or near *London*, shall be searched.
Explained by 1 W. & M. sess. 1. c. 33. sect. 3.

Wares of leather that be insufficient, may be seized and carried away.

SECT. 30. "Provided always, That none of the said several masters and wardens of the said several companies of cordwainers, curriers, girdlers or sadlers, shall search any person or persons, but such as use and exercise the mystery or occupation of the said master and wardens; (2) and that the coachmakers dwelling within the said city of *London*, or three miles from the same, shall be under the survey and search of the master and wardens of the company of the sadlers of *London*.

Who may search and be searched.

SECT. 31. "And be it further enacted, That the said mayor of the city of *London*, and the aldermen for the time being, upon like pain of forty pounds likewise to be levied and employed, shall likewise yearly appoint eight of the most substantial, honest, and expert persons, being freemen of some of the companies of cordwainers, curriers, sadlers or girdlers within the city of *London*, whereof one shall be a dealer, and keep a seal for the sealing of leather, to be prepared; who shall also be sworn before the said mayor and aldermen for the time being, to do their office truly; (2) which said searchers and sealers shall view and search all and every tanned hide, skin or leather, which shall be brought as well to the market of *Leaden-hall*, as to any other lawful fair or market therefore usually appointed within three miles of the said city, whether the same be sufficiently and thoroughly tanned, and thoroughly dried, according to the purport and true meaning of this statute, or no; (3) And finding it sufficiently and thoroughly tanned, and thoroughly dried, in such manner and form as by this statute is appointed, shall seal the same with the said seal.

Sellers of leather shall be appointed by the mayor, &c. of *London*, and their authority.

SECT. 32. "And be it further enacted by the authority aforesaid, That all mayors, bailiffs, and other head officers for the time being, in all other cities, boroughs, and market-towns of this realm, and all lords of liberties, fairs and markets out of the circuit or compass of the said three miles, shall upon like pain of forty pounds likewise to be levied and employed every year that they make default therein, appoint and swear yearly two, three, or more persons, of the most honest and skilful men within their several offices or liberties, by their discretion to search and

Searching and sealing of leather in all other parts of the realm.

view within the precinct of their several offices, liberties and authorities ; (2) which shall, as often as they shall think good, or need shall be, make like search within their limits, and shall have a mark or seal prepared for that purpose : And that the said searchers, or one of them, shall keep the same seal or mark, and with the same shall seal and mark such leather as they shall find sufficient, and no other : (3) And if the said searchers, or any of them, do find any leather sold, or offered to be sold, or brought to be searched or sealed, which shall be tanned, wrought, converted, or used contrary to the true intent and meaning of this statute, or any leather insufficiently curried, or any boots, shoes, bridles, or any other thing made of tanned or curried leather, insufficiently tanned, curried or wrought, contrary to any provision in this present act, it shall and may be lawful to the said searchers, or any of them, to seize all such leather, shoes, or other wares made of leather ; (4) and to retain the same in their custody, until such time as the same be tried by such triers, and in such manner and form as is hereafter in this statute appointed.

Six triers of leather shall be appointed in London.

Sett. 33. “ And to the end there may be an indifferent and equal course established for the trying of all such leather, boots, shoes, and other wares made of leather, as shall be seized by virtue of this act ; (2) Be it enacted by the authority aforesaid, That the mayor of the city of *London* for the time being, within six days after notice to him given of any seizure made of any leather, red or unwrought, within the jurisdiction of the said city, or three miles distant from the same, either by the owner or owners, or by the seizers of the said leather ; shall elect and appoint six honest and expert men, whereof there shall be of the better sort of the company of cordwainers of *London* two, of the better sort of the curriers of *London* two, and other two of the better sort of tanners using *Leaden-hall* market, who shall be no kin or of affinity to the said owner or owners : (3) Who upon their corporal oaths to be taken before the said mayor, shall on the second or third market-day at the furthest, to be holden upon the *Monday* for leather next after the said seizure, in the afternoon of the same day (to the intent the owner or owners may conveniently be present) enquire, traitly examine and try whether the said leather so seized shall be sufficient and serviceable, or not, according to the intent and true meaning of this present act.

Triers of tanned leather in other places.

Sett. 34. “ And be it further enacted, That every other mayor, bailiff, or other head officer or lord of liberty, or his sufficient deputy out of the said compass of the said three miles, within whose precincts or liberties any such seizure of any kind of tanned leather, red or curried, or of any shoes, boots, or other wares made of tanned leather, shall happen to be, shall with all convenient speed, after notice unto him given of such seizure, appoint six honest and expert men to try whether the same leather, boots, shoes, or other wares so seized, be sufficient and according to the true intent of this statute, or not, the same trial to be made openly upon some market-day, and within fifteen at the furthest next after such seizure made, upon the oaths of the said triers.

1 *Lutw.* 181.

2 *Lutw.* 1402.

Seet. 25. “ And be it enacted by the authority aforesaid, That if the said mayor of the city of *London* for the time being, or any other mayor, bailiff, or other head officer of any other city, borough, corporate or market town, or any lord of any liberty, fair or market, shall make default in the nomination or appointment of any the aforesaid triers to be nominated and appointed in such manner and form as is before ordained, That then every such mayor, bailiff, or other head officer, or lord of liberty, fair or market, making such default, shall forfeit and lose for every such default five pounds; the one moiety thereof shall be to the king’s majesty, his heirs and successors, and the other half to him or them that will sue for the same, in any of the king’s majesty’s courts of record, by bill, plaint, information, or otherwise: (2) And that the said persons so elected and appointed for the trial of the said leather, shoes, boots, or other wares made of tanned leather, so to be seized as aforesaid, shall proceed and do their duties therein without delay, according to the true intent and meaning of this act; (3) upon pain that every of them making default herein, shall for every such several default forfeit and pay five pounds.

The forfeiture of chief officers for not appointing of triers.

Seet. 36. “ And be it further enacted, That four of the said eight searchers, and sealers so to be appointed within the said city of *London*, as aforesaid, shall be at the end of every year changed and removed, and so many new chosen in their rooms and places; (2) and that no person or persons shall remain, continue, or be in the said office of searching or sealing of leather within the said city of *London*, above the space of two years together; (3) and he or they which shall serve or be employed in the said office of searching and sealing of leather two years, shall not in the said office be chosen, serve or employed again, until the end of three years at the least then next following; (4) upon pain that every person offending or doing the contrary, shall forfeit and lose for every month that he shall so contrarily use and exercise the said office, ten pounds.

The searchers and sealers of leather shall be changed yearly in *London*.

Seet. 37. “ And be it further enacted by the authority aforesaid, That if any searcher or sealer of leather shall refuse with convenient speed to seal any leather sufficiently tanned, wrought and used, according to the true meaning of this present act, or do allow that which shall be insufficient, That then every searcher and dealer shall forfeit for every such offence forty shillings: (2) and further, That if any searcher of leather shall receive any bribe, or exact any other fee for the execution of his said office, than is by this present statute limited, for the searching, sealing, and registering of leather, That then every such searcher or sealer so offending, shall forfeit for every such offence twenty pounds: (3) And that if any person or persons duly elected, according to the true meaning of this present act, to and for the execution of the said office of searching or sealing of leather, refuse to execute the said office, That then the said person or persons so refusing, shall forfeit and pay ten pounds.

The forfeiture of a searcher or sealer omitting his duty, or taking of bribes. *Skin. 366.*

Seet. 38. “ And be it further enacted by the authority aforesaid, That all red tanned leather which shall be brought into the city of *London*, or within three miles compass from the same, whether it be to be sold, or

Leather brought to *Leaden-hall* to be viewed be and registered.

Leather
bought in
Bartholomew
fair, or South-
wark market.

Searching
and sealing of
leather in or
near London.

The penalty
for denying
of search or
seizing of in-
sufficient
wares.

Registering of
leather sold
and bought,
and the fees
thereof.

be bought before-hand, or no, shall be brought to *Leadenhall*, before it be housed in his or their own houses, and there viewed whether it hath been searched or sealed, or no, and shall also be registred by the searchers to be appointed, as is aforesaid, with half such fees to be paid for such of the said tanned leather as shall be bought out of the said city of *London*, or three miles compass from the same, and shall be duly searched and sealed before it be brought within the said city, as is hereafter expressed for leather to be sold in *Leaden-hall*; (2) upon pain that every person housing, or not bringing his leather to *Leaden-hall*, as is aforesaid, shall forfeit for every hide or skin, six shillings and eight-pence. (3) Provided, That this article shall not extend to any leather to be bought in *Bartholomew-fair*, or *Southwark-market*, being searched, sealed and registred, according to the true meaning of this act.

Sett. 39. "And be it also further enacted by the authority aforesaid, That no tanned leather shall be sold within the city of *London*, or three miles distant from the same, before the same have been searched and sealed by the searchers and sealers, by virtue of this act to be appointed, to and for the searching and sealing of leather within the said city, and three miles distant from the same, upon pain of forfeiture of all such tanned leather otherwise sold, or the full value thereof.

Sett. 40. "And also be it further enacted, That if any person will after the said feast of St. *Bartholomew* next coming, wilfully withstand or deny any such search to be made, according to the tenor of this act, as is aforesaid, or will not suffer the said several masters and wardens of the several companies of cordwainers, curriers, girdlers, or sadlers, or other searchers so appointed, to enter into his or their house or houses, or other place, to view and search at their will and pleasure, all manner of tanned leather, and all manner of shoes, boots, mails, saddles, coach-coverings and harness, and all manner of wares wrought and made, or to be wrought and made of leather, and to seize and carry away all such leather, shoes and wares as they shall find insufficiently tanned, curried or wrought or made of ill stuff; that then all and every such person or persons so denying and withholding, and not suffering the said masters and wardens, and searchers, or any of them so appointed for the time being, to enter and make search, and seize, as is aforesaid, shall lose and forfeit for every time so denying and withholding, five pounds.

Sett. 41. "And be it further enacted, That such person and persons as hereafter shall be assigned and appointed searchers and sealers of tanned leather, by virtue of this act, shall within the limits and precincts of every of their searchers, keep one book or register, wherein they shall enter all such bargains as shall be made for leather, hides or skins, by any person or persons, during and by all the time of the fair or market, being thereunto required by the buyer or the seller, and also the prices of such leather bought and sold, with the names and dwelling-places of the buyer and seller; (2) taking for the searching, sealing and registering of every ten hides, backs, or butts of leather, with the necks, wombs and dabbings, or other pieces of offal cut off from the said backs or butts of leather,

leather, of the feller of every such ten hides, backs or butts of leather so entered, two-pence, and so after the rate; and for every six dozen of calves skins or sheeps-skins, two pence, and of the buyer, after the same rate, and no more, greater, or other sum or sums of money to be paid for searching, sealing or entering of any tanned leather.

Secl. 42. "And be it further enacted by the authority aforesaid, That no person or persons shall, after the said feast of St. *Bartholomew* next coming, sell, exchange, or put away, or cause to be sold, exchanged, or put away, any manner of tanned leather, red and unwrought, except he or they register, or cause to be registered the said tanned leather, and every part and parcel thereof, and the price thereof; (2) upon pain of forfeiture of the value of the leather so sold, exchanged, or put away and not registered. The penalty of selling of tanned leather not registered.

Secl. 43. "And be it further enacted by the authority aforesaid, That it shall not be lawful to or for any person or persons to buy any tanned leather before the same shall be searched and sealed, nor to carry, or cause to be carried out of the fair or market, any leather; till it be registered as aforesaid; (2) upon pain to forfeit the said leather, or the value thereof, so bought, and not searched and sealed, or carried away, and not registered. The penalty for buying of leather not sealed or registered.

Secl. 44. "And be it further enacted by the authority aforesaid, That if any currier within the said city of *London*, or three miles compass of the same, after the feast of St. *Bartholomew* next coming, do curry any leather insufficiently tanned, or after the said feast do not curry such leather as he doth or shall curry, substantially and well, according to the meaning and purport of this act: (2) or if any shoemaker, cordwainer or cobbler within the city of *London*, or three miles compass of the same, after the said feast of St. *Bartholomew* next, put any tanned leather into any shoes, boots, buskins, startops, slippers, pantofles, or other things made of tanned leather, which shall not be well and perfectly tanned, according to the purport and true meaning of this act; (3) or after the said feast do put any curried leather into any boots, buskins, startops, shoes, slippers, pantofles, or other things made of leather, which shall not be well and sufficiently tanned and curried, and also sealed, as is aforesaid; (4) or do make boots, buskins, shoes, startops, slippers, pantofles, or other things made of *English* tanned leather, in any other manner than is above specified and ordained: (5) or if any shoemaker, saddler, or other artificer, using, cutting or working of leather, do make any wares of any tanned leather insufficiently tanned, or of tanned or curried leather, being not sufficiently tanned and curried, as aforesaid, (6) or do not make their wares belonging to their several occupations, sufficiently and substantially: (7) That then every person so offending, shall forfeit for every such several offence or default, the said wares, and the just value thereof. The penalty of the currier or cordwainer omitting his duty. Mod. cases in law 165.

Secl. 45. "Provided always, and be it enacted, That no manner of person or persons shall after the said feast of St. *Bartholomew*, utter or sell, or cause to be uttered or sold within the said city of *London*, or within three miles compass of the same, any manner of wares appertaining to the ket. No selling of wares in London, but in open shop, fair or market.

the craft or mystery of any artificer using cutting of leather, but only in open shop, common fair or market, whereby the said wardens may have the true search of the same; (2) upon pain of forfeiture of all such wares so sold, and ten shillings for every time.

All cutters of leather in or near London shall be under search.

Stat. 46. " Provided alway, and be it enacted, That all and every person and persons whatsoever, now being, or that hereafter shall be free of the said city of *London*, of what company soever, and all foreigners, *English*, or aliens and strangers born, dwelling or inhabiting, or which hereafter shall dwell or inhabit within the city of *London*, or three miles compass of the same, as well within places privileged as not privileged, using or exercising any manual occupation of cutting or working of leather into made wares, shall be under the survey and search of the masters and wardens of such companies of the said city of *London*, as the artificers commonly using the same mystery or occupation, being freemen of the city of *London*, and of the same company, be, touching or concerning only their ware and stuff made of or with leather, in like manner and form as other freemen of the same company be or shall be, (2) and shall contribute and pay to the said several masters and wardens of the said several companies, for the time being, within the said city, as the artificers using the same mystery, being freemen of the said city, and of the same several companies, shall contribute and pay, the same to be recovered by distress or action of debt, in any of the king's majesty's courts of record; in which no wager of law for the defendant to be allowed: (3) All which pains, penalties and forfeitures aforesaid, of sums of money aforesaid, (except such pains, penalties and forfeitures as are before or hereafter by this act shall otherwise be disposed) shall be divided into three equal parts; one part whereof shall be to our sovereign lord the king, his heirs and successors; and another part to him or them that shall first sue for the same in any of the courts of record of the king's majesty, his heirs and successors, by action of debt, bill, plaint or information, or otherwise; in which suit, no wager of law or essoin shall be admitted or allowed; and the third part thereof shall go to the city, borough, town or lord or lords of liberties where the offence shall be committed or done: (4) And all such leather, shoes, boots, buskins, startops, slippers, pantofles, wares, stuff or other things whatsoever made of tanned leather or curried leather, which shall be seized by virtue of this act, and shall be found by the triers to be appointed, as is aforesaid, or by the masters and wardens of the several companies aforesaid, to be insufficient, shall be forfeited and distributed, as hereafter followeth: That is to say, such leather or stuff so seized within the city of *London*, or within three miles compass of the same, to be brought to *Guild-hall*, in *London*, there to be prized by indifferent persons, and the value thereof to be divided into three parts; whereof one part to be to the first seisor or seisors of the said unlawful stuff, and another part to the use of the chamber of *London*, and the other part to be distributed to the poor folks, as well being within the new hospital of *St. Bartolomew's* in *London*, as to such poor householders as shall be inhabiting within the city of *London*, or the circuit aforesaid, at the discretions of such person

Who shall have the money forfeited by this statute.

How the wares made of tanned leather, forfeited in London, shall be distributed.

sons as the mayor of the said city, and four aldermen of the same, for the time being, shall appoint for the same: (5) And that all such leather, boots, shoes, saddles, wares, stuff and things made of or with leather, as is ^{How the wares made of tanned leather, forfeited in other places shall be distributed.} aforesaid, which shall be found within any other city, borough, town or place within this realm, out of the said city of *London*, and three miles compass, insufficiently wrought, tanned or curried, as is aforesaid, and shall be seised and tried to be forfeited, in manner and form aforesaid, shall be brought to the common-hall of every such city, borough and town, or to some convenient and open place to be appointed by the lord of the liberty or his deputy, where no common hall is, there to be prized, as is aforesaid: (6) One part of the said value thereof to be disposed unto the poor, and in other deeds of charity in those parts, after the discretion of the mayors, bailiffs, headboroughs, and lords of liberties; another part to be delivered to the mayors, bailiffs and other head officers of any city, borough or town corporate, to the use of the commonalty of such city, borough or town corporate; and where no such officers be, then to the lord or lords of the liberty where any such forfeiture shall be committed, or seizure had; and the third part to the seisor or seisors of such leather, stuff or wares insufficiently tanned, curried or wrought, as is aforesaid, for his and their pains.

Stat. 47. " Provided always, That no person to whom any such unlawful leather or stuff shall be given by this act, shall give or sell any such leather or stuff to any person or persons that shall sell the same, upon pain that the buyer shall forfeit for every parcel of such unlawful leather or stuff to be sold, contrary to the true meaning of this last clause, three shillings and four-pence. ^{Forfeited wares shall not be sold to him that will sell it again.}

Stat. 48. Provided always, That this act, nor any thing therein contained, shall not in any wise be prejudicial or hurtful to the chancellors, vice-chancellors, proctors, taxors, and scholars, their officers, ministers, assigns or farmers of the universities of *Oxford* and *Cambridge*, or any of them, of, for or concerning the authority of search of tanned leather, or any of the forfeitures of the same, which they lawfully had, or might have had before the making of this present act; so as they do in all things observe such order in, about, or for searching, sealing and registering of leather, as by this act is prescribed and appointed, upon the pain therein contained; any thing therein contained to the contrary notwithstanding. ^{The authority of the officers in Oxford and Cambridge, for search of leather, reserved.}

Stat. 49. " And for the avoiding of all ambiguities and doubts which may and do grow upon the definition and interpretation of this word leather, (2) it is enacted and declared by these presents, That the hides and skins of ox, steer, bull, cow, calf, deer red and fallow, goats and sheep, being tanned or tawed, and every salt hide, is, shall be, and ever hath been reputed and taken leather. ^{What shall be reputed leather.}

Stat. 50. " And for the better execution of this act, be it further enacted, That all justices of assize, justices of gaol-delivery, justices of peace, and stewards of franchises, leets and law-days, within their several jurisdictions and liberties, and mayor of *London*, for the time being, ^{What officer may inquire of, and punish the offences aforesaid within said.}

within the said city, and within three miles compass of the said city, and all other mayors, bailiffs, and other head officers of cities, boroughs and towns, within their several jurisdictions, liberties, precincts, offices and authorities, shall enquire of all the premisses in their sessions, leet or law-day, and hear or determine the same, and also by their discretions examine all persons suspected to offend against this act, or any parcel thereof.

The steward's authority of a mayor of the king's.

Stat. 51. "And be it further enacted, That where any manor, liberty or franchise immediately appertaineth to the king's majesty, his heirs or successors, the steward for the time being, of every such manor, liberty and franchise, shall have the like authorities, powers, jurisdictions and advantages, and also shall bear and pay all the like pains, penalties and forfeitures, as are given, appointed, limited or laid by this statute to or upon the lords of liberties and franchises, as in this statute is expressed.

Dry currying and frizing of leather, and who may use it.

Stat. 52. "And be it further enacted, That all currying and dressing of leather, commonly called dry currying and frizing, shall be construed to be dressing and currying of the manner of *Spanish* leather, of what colour soever they be; and that to all artificers (other than shoemakers yearly between the last of *September*, and the twentieth of *April*) it shall be lawful to use all kinds of leather dressed and carried in what manner of dry-currying and frizing, as they lawfully might before the making of this act, so that the same leather so to be used, be well and sufficiently tanned, according to the form prescribed in this act, and also well and substantially dressed, carried and frized, in the manner of dry-currying and frizing aforesaid.

This act shall extend to Wales.

Stat. 53. "And be it enacted by the authority aforesaid, That this act and every part thereof, shall be construed and adjudged to extend to *Wales*, as amply as it doth to this realm, to all intents, constructions and purposes.

The forfeiture of customers, &c. suffering leather to be transported, and not to seize or disclose it.

Stat. 54. "And forasmuch as (notwithstanding the good laws and great penalties in that behalf provided) great quantities of leather are daily transported out of this realm, and especially by the negligence and corruption of comptrollers, customers, searchers, and all their deputies, (2) be it therefore enacted by the authority aforesaid, That if any leather wrought, cut, or unwrought, to the intent to be sold or bartered, shall hereafter unlawfully be transported, or purposed to be transported into the parts beyond the sea, from and out of any port, haven or creek of this realm, or *Wales*; every comptroller, customer, surveyor, collector of tonnage and poundage, and the searchers, and the deputy of any of them, or any other persons hearing or knowing by any ways, of any leather meant to be transported from any place within his office, and do not his best endeavour to seize the same, or being transported, do not disclose, or cause to be disclosed the same within forty days next after such knowledge, or hearing of the same, in some court of record, so as the offender may be punished according to the laws in that case provided, shall for the first offence committed against this article, forfeit an hundred pounds; (3) and for the second offence shall forfeit his office.

Señ. 55. “ And be it further enacted, That every customer, officer or officer’s deputy that shall make any false certificate of the arrival of any leather in any port, creek or place of this realm, shall forfeit for every such offence, an hundred pounds. ”

Señ. 56. “ Provided alway, That neither this act, nor any article, exposition or thing therein contained, shall extend to any *Scotish* hides to be brought into the town of *Berwick* out of the realm of *Scotland*, being registered in a book therefore to be kept, by such person or persons as the mayor of the said town for the time being, shall thereunto name and appoint, with the name and surname of the buyer and seller, to the intent the *English* hides might be known from the *Scotish*, but that the inhabitants of the said town of *Berwick* may send, carry and transport such *Scotish* hides, as they lawfully might transport before the making of this act. ”

This act shall not extend to *Scotish* hides brought to *Berwick*.

Señ. 57. “ Provided always, and be it enacted by the authority aforesaid, That if any person or persons shall at any time hereafter procure or obtain any grant, or letters patents, purporting to give licence or authority to any person or persons to dispence with, or tolerate any offence against any clause, provision or article in this present act, That then and immediately from and after such letters patents or grant obtained, all and every such clauses, articles and provisions, so by the said letters or grant authorized or licensed to be dispensed with, or tolerated, as aforesaid, shall be utterly repealed, void, and of none effect; any thing in this present act contained to the contrary in any wise notwithstanding: (2) This act to endure until the end of the next session of the next parliament. ”

Licences to dispence with the offences prohibited by this act, shall be void.

Continued until the end of the next session of parliament.

Señ. 58. “ And be it further enacted by the authority aforesaid, That as well one statute made in the fifth year of the reign of our late sovereign lady queen *Elizabeth*, intituled, *An act concerning tanners, curriers, and other artificers occupying cutting of leather*, as all former statutes, and every part or parts of any former statute or statutes thereby repealed, shall from henceforth be utterly repealed for ever.” 3 *Car. 1. c. 4.* Continued until the end of the first session of the next parliament; and farther continued by 16 *Car. 1. c. 4.* ”

A repeal of the statute of 5. *Eliz. c. 8.* and of all former statutes repealed by the same.

STAT. 4 *Jac. 1. c. 6.* [*A. D. 1606. Intituled*] “ An act for repealing of so much of one branch of a statute made in the first year of his majesty’s reign, intituled, an act concerning tanners, curriers, shoemakers, and other artificers occupying the cutting of leather, as concerneth the sealing of sheep-skins, and to avoid selling of tanned leather by weight.”

“ Whereas by the same statute it plainly appeareth, That the intent and meaning thereof was to make void all former statutes made concerning tanners, curriers, shoemakers, and other artificers occupying the cutting of leather, and to comprehend in one statute all things mentioned in the same former laws needful to be enacted concerning tanners, curriers, shoemakers, and other artificers occupying the cutting of leather: (2) and for that in divers branches of the said late statute, touching the sealing of leather, amongst many other kinds of tanned leather therein particularly named to be sealed, a rate is set down to be paid for sealing of sheep-skins,

The intent of the stat. made 1 *Jac. 1. c. 22.* 27 *H. 8. c. 14.* 5 & 6 *Ed. 6. c. 15.* 1 *Ma, sess. 3. c. 8.* 5 *El. c. 22.* 8 *El. c. 14.*

18 El. c. 9.
Sneepskins
have not been
appointed by
any law to be
sealed.

skins, as if sheep skins had been by the intent of the former laws usually sealed; whereas in truth, sheep-skins are not meet to be sealed, nor were at any time appointed or limited by any former law to be sealed, because the sealing of them is a fruitless charge, tending to the great hurt and loss of many thousand poor men, and for the good of none, but only for the gain of the sealer thereof:

There shall
be no penalty
for housing,
buying or sell-
ing sheeps-
skins unseal-
ed.

Seet. 2. "For reformation whereof, Be it enacted by our sovereign lord the king's majesty, and by the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, That no person or persons shall at any time hereafter incur any penalty, loss or forfeiture, for housing, selling or buying of any tanned sheep-skins unsearched or unsealed, so as the said sheep-skins unsearched and unsealed, shall be wrought and converted into made wares within this realm of *England*; any thing in the said statute to the contrary notwithstanding.

1 Jac. 1. c. 22.
No tanned
leather shall
be sold by
weight.

Seet. 3. "And where since the making of the said statute, his majesty's subjects have been much deceived and abused, by selling of tanned leather by weight, the said leather being neither sufficiently tanned, nor thoroughly dried as it ought to be, and before time was wont to be; (2) be it therefore further enacted by the authority aforesaid, That no person or persons, after the end of this present session of parliament, shall utter or sell, or cause to be uttered or sold, by weight, any kind of tanned leather whatsoever, (3) upon pain of forfeiture of the said leather so uttered and sold; the said leather or the value thereof, to be recovered in any of the king's majesty's courts of record, by action of debt, bill, plaint or information, wherein no wager of law, essoin or protection shall lie or be allowed; the one moiety of the said forfeiture to be unto the king our sovereign lord, his heirs and successors, and the other moiety unto such person or persons as shall sue for the same."

See 1 W. &
M. sess. 1.
c. 33. f. 8.

STAT. 13 & 14 Car. 2. c. 7. [*A. D.* 1662, intituled] "An act to restrain the exportation of leather and raw hides out of the realm of *England*."

5 & 6 Ed. 6.
c. 15.
5 Eliz. c. 22.
8 Eliz. c. 14.
18 Eliz. c. 9.

"Whereas notwithstanding the many good laws before this time made, and still in force, prohibiting the exportation of leather out of this realm, and the penalty by those acts imposed, by the cunning and subtlety of some persons, and the neglect of others who ought to take care thereof, there are such quantities of leather daily exported to foreign parts, that the price of leather is grown to those excessive rates, that many artificers working leather, cannot furnish themselves with sufficient store thereof, for the carrying on of their trades; and the poor sort of people are not able to buy those things made of leather, which of necessity they must make use of:

Seet. 2. "For redress of which griefs, Be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and the commons in this present parliament assembled,

assembled, That from and after the first day of *May* now next ensuing, no person or persons whatsoever, shall carry or transport, or cause to be carried or transported out of *England* into *Scotland*, *Ireland*, or into any of the isles belonging to this kingdom, or to any parts beyond the seas, the skins or hides tanned or untanned of any ox, steer, bull, cow or calf, otherwise, or in any other manner than is by this present act directed.

Sec. 3. “ And be it further enacted by the authority aforesaid, That none of the skins or hides aforesaid, which shall happen to be taken from any of the beasts aforesaid, within any island whatsoever, belonging to the kingdom of *England*, (except *Ireland*) shall be transported out of that island to any other place, but into the kingdom of *England*; (2) upon pain of forfeiture for every such offence, double the value of skins or hides so to be transported out of the said island, or any of them, to any other place than into the kingdom of *England*; the same forfeiture to be sued for and disposed, as hereafter in this act is directed.

Sec. 4. “ And for the better preventing of such mischiefs as are intended to be remedied by this act, Be it enacted by the authority aforesaid, That all red tanned leather made of the hides or skins of any of the beasts aforesaid, of what kind or nature soever, shall be bought only in the open and common fair or market used for the putting of leather to sale, and not in any house, tanner’s yard, shop or other place whatsoever; (2) on pain that such person or persons that shall not accordingly do the same, shall for every such offence forfeit the same leather, or the value thereof, and the contract for the sale thereof shall be void; (3) and all such leather shall be searched and sealed by the searchers and sealers thereunto appointed, before the same be put to sale, and upon such sale shall be registred, and a true entry thereof made both by the buyer and seller, who are both to be present at such registring thereof, and both their names and places of abode entered into the book of the said register; on pain that every such buyer or seller that shall not accordingly do the same, shall for every such offence forfeit the same leather, or the value thereof, and the forfeiture shall be recovered and employed in such manner, as hereafter in this act is directed.

Sec. 5. “ And be it further enacted by the authority aforesaid, That if any person or persons shall be found guilty of the transportation of any leather, or any raw hides of any the beasts aforesaid, (excepting such calve-skins and sheep-skins, dressed without the wool, as by law may be transported) contrary to the provision of this act, he shall from thenceforth be disabled to trade, or deal in leather for the future; (2) and shall for every such offence forfeit the sum of five hundred pounds, to be sued for, and disposed as hereafter in this act is directed.

Sec. 6. “ Provided nevertheless, That this act, or any thing therein contained, shall not extend to the prohibiting the transportation of any leather made into boots, shoes or slippers, but that the same may be transported; any thing in this act contained to the contrary notwithstanding.

Went skins or hides tanned may not be transported. Tanned leather may be transported into Scotland, &c. 20 Ca. 2. c. 5.

The penalty.

What leather must be bought only in open fairs or markets for selling leather.

The penalty.

The penalty.

Penalty for transportation of any leather or raw hides.

5 & 6 Ed. 6. c. 15. s. 5. 1 Ma. sess. 3. c. 8.

Who may
search and
seize leather
or hides in-
tended to be
transported.

SeEt. 7. " And be it further enacted by the authority aforesaid, That it shall and may be lawful to and for the respective masters and wardens of the cordwainers, sadlers, girdlers and curriers of the city of *London*, and their deputies, and all customers, comptrollers, farmers of customs, supervisors, searchers, and other officers belonging to the customs, and to and for all justices of the peace, mayors, and chief officers of corporations within this realm, dominion of *Wales*, or town of *Berwick upon Tweed*, from time to time, as well by land as water, to search for, and seize any leather, or raw hides, wrought or unwrought, cut or uncut, packed up, or unpacked, intended or purposed to be transported by any person or persons into any parts beyond the seas, or into *Scotland*, other than calve-skins and sheep skins, as aforesaid.

Shaving of
leather by
tanners.

SeEt. 8. " And whereas divers tanners do shave, cut and rake their upper-leather hides all over, and the necks of their backs and butts, to the great impairing thereof, and the extreme prejudice of the kingdom; (2) Be it therefore enacted by the authority aforesaid, That every tanner, who after the nine and twentieth day of *September* in the year of our Lord one thousand six hundred sixty and two, shall commit any such offence, as aforesaid, shall forfeit all the said leather, backs, butts or calve-skins so shaved, cut or raked, or the value thereof, and it shall be lawful for the searchers and sealers of leather to seize the same.

Leaden-hall,
London.

SeEt. 9. " And be it further enacted, That the market for leather in *Leaden-hall*, in *London*, shall be kept on the *Tuesday*, as now it is; any law, usage or custom to the contrary in any wise notwithstanding.

How the pe-
nalties shall
be recovered.

SeEt. 10. " And be it further enacted by the authority aforesaid, That all the penalties and forfeitures, and every sum and sums of money for any offence or offences herein before mentioned, shall be recovered by action of debt, bill, plaint, information, to be brought for the same in any court or courts at *Westminster*, or in any court or courts of record in the city, town, county or place where the said offence shall be committed, wherein no wager of law, protection or effoin shall be admitted, neither shall the same be removed out of the said county, city or town corporate; (2) the one half of the said forfeitures to be to the use of the king's majesty, his heirs and successors, and the other half thereof to the use of the informer or informers that shall sue for the same.

Transporta-
tion of lea-
ther declared
a common
nuisance.
Leather for
necessary use
of ships in
voyages,

SeEt. 11. " Provided also, and be it enacted, That all such exportation or transportation of any hides or leather, contrary to this act, is hereby adjudged and declared to be a common and publick nuisance.

SeEt. 12. " Provided nevertheless, That this act shall not extend, or be construed to prohibit the carrying or conveying of any such hides or leather which shall be used or employed for the necessary use, or provision of any ship or vessel in any voyage beyond the seas, and which shall not be sold in any foreign parts, so as the number do not exceed six raw hides, and three tanned hides.

Artificers
dealing in
cutting of lea-
ther in Lon-

SeEt. 13. " Provided always nevertheless, and be it further enacted by the authority aforesaid, That all and every artificer dealing in cutting of leather, or other person or persons whatsoever, which shall hereafter buy any

any red tanned leather within the city of *London*, or three miles thereof, shall before the next market-day within the said place for sale of leather, give notice thereof to one or more of the company of curriers then exercising and using the art and mystery of a currier within the said city of *London*, and three miles thereof, and within three weeks after such notice shall deliver, or cause to be delivered the said leather so bought, except such part thereof as shall be used for soals without being curried, tallowed, or dressed, unto the said currier or curriers to whom such notice was given, to the intent that the same may be curried, tallowed, or otherwise dressed, as is directed and appointed by one act made in the first year of king *James*, chapter twenty-second, touching the duty of tanners, curriers, shoe-makers, and others; (2) upon penalty of the forfeiture of six shillings and eight-pence for every back, butt, hide or calve-skin so bought, and not delivered, as aforesaid, for the uses, and to be recovered, as aforesaid.

Stat. 14. "And whereas it is enacted amongst other things, by the said act made in the first year of king *James*, That no person or persons shall by any means occupy, or put in any made wares within the said city of *London*, or three miles of the same city, any curried leather before the same shall be searched and allowed by the wardens of the curriers of *London* for the time being, or such persons as they shall thereto assign, and be sealed with a seal therefore to be prepared; upon pain that every shoe-maker and other artificer, cutter of leather, offending against that article, should forfeit for every hide or skin otherwise curried or employed, as is aforesaid, six shilling eight-pence, and the value of every such hide or skin; (2) be it therefore further enacted by the authority aforesaid, That the master and wardens of the company of curriers for the time being, or such persons as they shall thereto assign, shall from time to time, and at all seasonable times in the day-time, enter into any warehouse, shop, cellar, or other place within the said city of *London*, or three miles of the same city, belonging unto any of the said cordwainers, sadlers, girdlers, or other person or persons being artificers, dealing in cutting leather, and in the presence of any two or more of them, to search for, and seize all such leather intended to be prohibited to be used by the said clause, branch or article, as aforesaid, as also for all wares made of such leather; (3) and if any such person or persons, artificers or dealers, as aforesaid, shall oppose, or refuse to permit the said masters and wardens of the company of curriers, or such persons as they shall thereto assign, to make any such search or seizure, as aforesaid, he or they shall forfeit for every such offence the sum of twenty pounds for the uses, and to be recovered as aforesaid; (4) and if any of the said artificers and dealers in cutting of leather, do refuse to be present with the searchers, whensoever the same shall be desired by the said master and wardens of the company of the curriers, or such persons thereto assigned by them, as aforesaid, then for every such default the persons so refusing shall forfeit the sum of ten pounds for the uses, and to be recovered, as aforesaid."

STAT.

STAT. 20 *Car. 2. c. 5.* [*A. D. 1668. Intituled*] “An act for giving liberty to buy and export leather, and skins tanned or dressed.”

“Whereas it is found by experience, since the late strict prohibition of the exporting of leather, That the price thereof, and consequently of raw hides, are very much abated, to the great discouragement of the breed and feeding of cattle, and fall of the rents and value of land, and yet that the makers of boots and shoes, and other workers in leather, have still, during this time, sold their wares and commodities very dear :

After the 25th
of March
1668, all sorts
of leather
may be ex-
ported.

Seff. 2. “Be it enacted by the king’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, That from and after the twenty-fifth day of *March*, which shall be in the year of our Lord one thousand six hundred and sixty-eight, It shall and may be lawful for any person or persons, native or foreigner, to buy in open fair or market, and to export and transport into *Scotland* or *Ireland*, or any foreign parts beyond the seas, all sorts of leather, sheep-skins, or calve skins, tanned, tawed, or dressed ; any law, statute or usage to the contrary in any wise notwithstanding : paying for each hundred weight of all sorts of leather, sheep-skins, and calve-skins, containing one hundred and twelve pounds, and so proportionably for a greater or lesser quantity, the sum of twelve-pence, and no more.

The continu-
ance of this
act.

Seff. 3. “It is hereby further enacted by the authority hereof, That this act shall continue and be in force until the five and twentieth day of *March*, one thousand six hundred and seventy-five, and until the end of the first session of parliament then next ensuing, and no longer. *Further continued by 1 Annæ, Stat. 2. c. 13. 9 Annæ, c. 6. and made perpetual by 3 Geo. 1. c. 7.*

STAT. 1 *Will. & Ma. Seff. 1. c. 33.* [*A. D. 1688, intituled*] “An act for explaining part of an act made in the first year of king *James* the First, concerning tanned leather.”

1 Jac. 1.
c. 22. f. 29.

“Whereas by a statute made in the first year of king *James* the First it was enacted, That the master and wardens of the several mysteries of the cordwainers, curriers, girdlers, and sadlers of the city of *London*, for the time being, or the major part of the said master and wardens of every the said several mysteries, under the penalty therein mentioned, should four times in the year at least (that is to say) once every quarter of the year, or oftner, if need should require, search, and view all boots, shoes, buskins, and other wares and things whatsoever made of tanned leather, in all and every houte and houses, place and places, privileged or not privileged, as well within the city of *London* and suburbs thereof, as in every other place within three miles of the same city, where any shoemaker, sadler, girdler, currier, or other artificer using, cutting, working, or dressing of leather, whether the same boots and shoes, wares, stuff or
other

other things, were made of tanned leather, and were wrought according to the purport, effect, and true meaning of the said statute, or not:

Señ. 2. “ And whereas some doubts have been made, whether tanned leather, when and after it hath been fully dressed and curried by the currier, be a ware within the said statute, and several suits of law have been carried on against the master and wardens of the company of curriers, to their great charge and vexation, and tending to the utter avoiding the good provision made in the said statute for the due and lawful currying and dressing of leather, and the search and view thereof, to be made as by the said statute is required: for the removing therefore of all doubts, and that search and view may be duly made according to the said statute:

Señ. 3. “ Be it enacted by the king’s and queen’s most excellent majesties by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That all and every hide, skin, or piece of tanned leather, shaved or liquored, of what colour soever, with any lawful liquoring or dressing, and being well and truly curried according to the directions of the said statute, shall be adjudged, reputed, and taken to be made ware and manufacture of the said currier, and subject to the view, search, and seizure of the said master and wardens, or the major part, as in and by the said statute is provided, and shall be liable to be seized, and subject to the same penalties as other wares insufficiently made of tanned leather by the said statute are liable and subject unto.

Señ. 4. “ Provided always, That nothing in this or any other act shall extend to give any power to the master and wardens of the company of curriers, to visit, search, or seize any leather, hide, or skin, but such only as shall be curried or dressed within the city of *London*, or three miles thereof, by some members of their own company, nor in any other place, but in the open market, or in the shops, houses, or warehouses of such curriers.

Señ. 5. “ And be it further enacted by the authority aforesaid, That it shall and may be lawful to and for all leather-sellers, curriers, shoemakers, and all other person and persons whatsoever, that do deal or work in leather, freely to buy all sorts of red tanned leather in any open fair or market, whether curried or uncurried, the same being first searched and sealed, according to the form of the statute in that case made and provided, and having so bought the same, to sell it again to any person or persons whatsoever, in their public and open shops, or to cut and convert the same into other made ware, according to their several and respective trades.

Señ. 6. “ And be it further enacted, That it shall and may be lawful for any person or persons to buy or sell leather, hides, and skins by weight; any law, statute, or other provision to the contrary in any wise notwithstanding.”

STAT. 9 *Ann. c. 11.* [*A. D. 1710, intituled*] “An act for laying certain duties upon hides and skins, tanned, tawed, or dressed, and upon vellum and parchment, for the term of thirty-two years, for prosecuting the war, and other her majesty’s most important occasions.” *Made perpetual by 3 Geo. c. 7. sect. 1.*

1 Ja. 1. c. 22. *sect. 10.* “And whereas, in the first year of the reign of king James the first, of happy memory, a good and wholesome statute was made concerning tanners, shoemakers, curriers, and other artificers in leather, wherein ample provision was made for the true and well tanning, currying and working of leather, and for and concerning the buying and selling of leather, red, and unwrought, in open fairs and markets, and for such other matters and things relating to leather, as in the said statute are plainly and largely expressed, the due execution whereof hath been, and is of great importance to the public good, and service of this realm, and will very much contribute to the ascertaining and collection of several of the duties by this act intended to be granted: Be it therefore enacted by the authority aforesaid, That all mayors, bailiffs, or other head officers for the time being, in the several cities, boroughs and market-towns of this realm; and the respective lords of liberties, fairs and markets; and the masters and wardens of the several companies in the said act expressed; and all tanners, curriers, shoemakers, and other artificers, and all and every other person and persons whatsoever, who are, or ought to be concerned in the execution of the said statute, or to give evidence thereunto, shall (under such pains, penalties and forfeitures as are therein severally expressed) duly execute, observe and comply with the same statute, and all the clauses, matters and things therein contained, in relation to the tanning, dressing, making, buying, selling, trying, sealing, registering, or other matters concerning leather, other than such as have been altered by any law or statute since that time made, and now in force.

Mayors, bailiffs, &c. and all tanners, &c. are to execute, and comply with the stat.

1 Ja. 1. c. 22.

Penalty on gashing hides or skins.

sect. 11. “And for the better preventing the gashing and cutting of any hides in slaying thereof, whereby the same shall be impaired or hurt, It is hereby enacted, That from and after the four and twentieth day of June one thousand seven hundred and eleven, if the raw hide of any ox, bull, steer, or cow, or the skin of any calf, shall wilfully or negligently, be gashed, slaughtered, or cut, in the slaying thereof, or being gashed, slaughtered or cut, as aforesaid, shall be offered to sale by any butcher, or any other person or persons whatsoever, Then and in every such case, the butcher or other person, who impaired or hurt the said hide, by gashing, slaughtering, or cutting, as aforesaid, or the person offering the same to sale, shall for every such offence, forfeit and pay the sum of two shillings and six pence for every such hide, and one shilling for every such calve-skin, to wit, one moiety thereof to the poor of the parish where the same shall be found or offered to sale, and the other moiety thereof to such persons as will seize, inform, or sue for the same.

Penalty on shaving hides, before the same be thoroughly tanned.

sect. 12. “And be it further enacted, That if any tanner or other person or persons, from and after the said four and twentieth day of June, one thousand seven hundred and eleven, shall shave or cause to be shaved any hide

Hide or calve-skin whatsoever, before the same be thoroughly tanned, whereby such hide or skin shall be impaired, and her majesty's duty thereby diminished, every such hide or skin, or the value thereof, shall be forfeited; one moiety to the queen, and the other moiety to him or them that will inform or sue for the same.

Stat. 36. "And be it further enacted by the authority aforesaid, That Two justices it shall and may be lawful to and for any two or more of the justices of ^{or more, of} the peace, for the time being, residing near to the place where any forfei- ^{the place,} ture upon this act shall be incurred, or any offence against this act shall ^{may hear and} be committed, in any wise relating to the said hides or skins, or pieces of ^{determine} upon this act, hides or skins, vellum or parchment, chargeable by this act, or any the duties thereupon, or the powers and authorities hereby granted, or where any offence shall be committed against the said recited act of the first year of the reign of king *James* the first, to hear and determine the ^{Ja. 1. c. 22.} same: which said justices of the peace are hereby authorized and required, upon any information exhibited, or complaint made in that behalf, within three months after any seizure made, or such offence committed, to summon the party accused, and also the witnesses on either side, and upon the appearance or contempt of the party accused, in not appearing, (upon proof of notice given) to proceed to the examination of the witness or witnesses upon oath, (which oath they are hereby impowered to administer) and to give judgment or sentence accordingly; and where the party accused shall be convicted of the offence alledged against him, to award and issue warrants under their hands for the levying any pecuniary penalty or penalties so adjudged, on the goods of the offender, and to cause sale to be made thereof, in case they shall not be redeemed within six days, rendering the party the overplus (if any): And if either party shall find ^{Appeal to} himself aggrieved, or remain unsatisfied in the judgment of the said jus- ^{quarter-sessi-} tices, then he or they shall or may, by virtue of this act, complain or ap- ^{ons final.} peal to the justices of peace at the next general quarter-sessions for that county, riding, or place, who are hereby impowered to summon and examine witnesses upon oath, and finally to hear and determine the same, and, in case of conviction, to issue warrants for levying the penalties, as aforesaid."

STAT. 12 Geo. 2. c. 25. [A. D. 1739, intituled] "An act to obviate some doubts which have arisen upon the construction of an act made in the first year of the reign of king *William* and queen *Mary*, intituled, *An act for explaining part of an act made in the first year of the reign of king James the First, concerning tanned leather*; and for rendering more effectual a clause in the said last mentioned act, which obliges curriers to curry leather; and for repealing two clauses in the said last mentioned act."

"Whereas certain doubts have arisen upon the construction of an act ^{Preamble, re-} passed in the first year of the reign of their late majesties king *William* and ^{citing the act} queen *Mary*, intituled, *An act for explaining part of an act made in the first* ^{W. & M.} *year of the reign of king James the First, concerning tanned leather*, relating ^{Stat. 1. c. 33.}

Liberty
granted to
buy, cut, and
sell leather,
curried or un-
curried, in
small pieces.

Persons un-
qualified not
heretofore li-
censed to
exercise the
shoemakers
trade;

nor shoemak-
ers to act in
any place
against law.

1 Ja. 1. c. 22.

Penalty on
curriers refus-
ing to curry
any leather
within a li-
mitied time.

to the cutting and felling of tanned leather in small pieces: and whereas the cutting and felling of tanned leather in small pieces, for the use of the various artificers working up the same into made wares, is a great convenience and advantage to such artificers, and a benefit to the public in general: may it therefore please your most excellent majesty that it may be enacted, and be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That from and after the twenty-fourth day of *June*, one thousand seven hundred and thirty-nine, it shall and may be lawful for all leather-sellers, curriers, shoemakers, and all other persons whatsoever, who do deal or work in leather, freely to buy all sorts of tanned leather in any open fair or market, whether curried or uncurried, such leather being first searched and sealed according to the form of the statutes in that case made and provided; and to cut and sell the same in any small pieces, whether curried or uncurried, in their public and open shops, to the various artificers who work up and convert the same into their made wares, or to any other person or persons whatsoever; any thing in the said recited act or any former acts contained to the contrary thereof in any wise notwithstanding.

Sec. 2. " Provided nevertheless, That nothing in this act contained shall extend, or be construed to extend, to give liberty to any person or persons whatsoever to make, cause, or procure to be made, any boots, shoes, clogs, or slippers, or to sew, close, or fit to the last, or cause or procure to be sewed, closed, or fitted to the last, pieces of leather for making boots, shoes, clogs, or slippers for sale, other than such person or persons who are or shall be legally intitled to exercise the trade of a cordwainer, or such persons as shall be cobblers or translaters.

Sec. 3. " Provided always, That nothing in this act contained shall be construed to extend to give a right to any leather-seller, currier, shoemaker, or any other person whatsoever, to exercise their respective trades in any town-corporate, or place, where by law they cannot now exercise the same.

Sec. 4. " And for the making more effectual a clause in the said act made in the first year of the reign of king *James* the First, which obliges curriers to curry leather for the several artificers working up the same; be it further enacted by the authority aforesaid, That if any currier or curriers shall, from and after the said twenty-fourth day of *June*, one thousand seven hundred and thirty-nine, refuse to curry any leather brought or sent to him or them for that purpose, by any leather-sellers, shoemakers, or other persons whatsoever, who do deal or work in leather, or shall neglect to curry the same within the space of sixteen days, between the twenty-eighth day of *September*, and the twenty-fifth day of *March* following, and within the space of eight days in the remaining part of the year, after such leather shall be brought or sent and delivered to him or them; such currier or curriers, who shall in either of the said cases offend, shall for every such offence, being thereof lawfully convicted before any one or more justice or justices of the peace within the

county,

county, city, town-corporate, liberty, or place where such offence shall be committed, by the oath of one or more credible witness or witnesses, forfeit and pay the sum of five pounds, to be recovered by distress and sale of the offender's goods and chattels, rendering the overplus (if any there shall be) after deducting the expence of such distress and sale, to the owners thereof; one moiety of which forfeiture shall go to the informer, and the other moiety to the poor of the parish where such offence or offences shall be committed; any thing in the said clause, or in any former law contained to the contrary thereof in any wise notwithstanding.

Secl. 5. " Provided nevertheless, That it shall and may be lawful to and for the said respective justices, where they shall see cause, to mitigate or lessen any such penalties according to their discretion. Justices may mitigate penalties.

Secl. 6. " And be it further enacted by the authority aforesaid, That if any person or persons shall think himself or themselves aggrieved by the determination of the justice or justices aforesaid, it shall and may be lawful for such person or persons to appeal to the general quarter sessions of the peace, to be next held for such county, city, town-corporate, liberty, or place, where such offence shall be committed; and that the determination of the justices, or the major part of them then and there made, shall be conclusive and final, to all intents and purposes whatsoever; and that no *certiorari* shall be allowed to remove any determinations or proceedings as above directed. Appeal from them to the quarter sessions.

Secl. 7. " And be it further enacted by the authority aforesaid, That the two clauses in an act made in the first year of king *James the First*, intituled, *An act concerning tanners, curriers, shoemakers, and other artificers occupying the cutting of leather*, which prohibit any persons dwelling in *London*, the liberties thereof, or within three miles of the said city, occupying wet curried leather in their art or occupation, to put forth such leather to be curried, but to such persons as are free of the company of curriers of the city of *London*, under pain of forfeiture of such leather, or the value thereof; and also prohibiting any persons within the said city, or three miles distance, to put in any made wares any curried leather, before the same shall be searched and allowed by the wardens of the curriers of *London*, and be sealed with their seal, upon pain of forfeiting for every hide or skin otherwise curried or employed, six shillings and eightpence, and the value of such hide or skin; shall from and after the said twenty-fourth day of *June*, be, and are by this present act repealed and made void to all intents and purposes whatsoever; any thing in the said recited act or any other act contained to the contrary thereof in any wise notwithstanding. Two clauses in the act 1 Jac. 1. repealed.

Secl. 8. " Provided nevertheless, That nothing herein contained shall extend, or be construed to extend, to lessen or take away any power or privilege given to the said company of curriers by charter or grant, so far as they may or can use or exercise the same in the city of *London* or liberties thereof. Privileges of the curriers company not hereby lessened.

Secl. 9. And be it further enacted by the authority aforesaid, That this act shall be deemed, adjudged, and taken to be a public act; and be judicially

dicially taken notice of as such, by all judges, justices, and other persons whatsoever, without specially pleading the same."

Lecturer.

IN *London* and other cities there are lecturers appointed, as assistants to the rectors of churches. They are generally chosen by the vestry or chief inhabitants, and are usually the afternoon preachers. There are also one or more lecturers in most cathedral churches; and many lectureships have likewise been founded by the donation of private persons, as *Lady Moyer's* at *St. Paul's*, and many others; and it seemeth generally, that the bishop's power is only to judge as to the qualification and fitness of the person, and not as to the right of the lectureship; as in the case of the churchwardens of *St. Bartholomew's*, *M. 12 W.* one *Fisbburne* left 25*l.* a year for the maintenance of a weekly lecturer, and appointed that the lecturer should be chosen by the parishioners, and to preach on any day in every week as they should like best. The parishioners fixed on *Thursday*, and chose a lecturer every year; and now *Mr. Turton* being lecturer, and the parish having chosen *Mr. Rainer*, the other would not submit to the choice, whereupon the churchwardens shut *Turton* out of the church. Afterwards the bishop of *London* determined in his favour, and granted an inhibition and monition for that purpose. But by *Holt* chief justice; a prohibition must go to try the right: it is true, a man cannot be a lecturer without a licence from the bishop or archbishop; but their power is only as to the qualification and fitness of the person, and not as to the right of the lectureship; and the ecclesiastical court may punish the churchwardens, if they will not open the church to the parson, or to any one acting under him, but not, if they refuse to open it to any other. 3 *Salk.* 87. 1 *B. Ecc. L.* 659, 660.

But in case where there is no fixed lecturer, or ancient salary, but the lectureship is to be supported only by voluntary contributions, and there is not any custom concerning such election; it seemeth that the ordinary is the proper judge, whether or no any lecturer in such place ought to be admitted; as in the case of the lecturer of *St. Ann's, Westminster*, *T. 16. Geo. 2.* the court of King's Bench, upon consideration, refused to grant a *mandamus* to the bishop of *London* to grant licence to a lecturer, who appeared to have no fixed salary, but to depend altogether upon voluntary contributions, and where there was no custom; and the rector had refused his leave to preach in the church to the person now applying. *Stran.* 1192.

STAT. 13 & 14 Car. 2. c. 4. [A. D. 1662, intituled] "An act for the uniformity of publick prayers, and administration of sacraments, and other rites and ceremonies; and for establishing the form of making, ordaining and consecrating bishops, priests and deacons in the church of *England*."

Se^{ct}. 19. "And be it further enacted by the authority aforesaid, That ^{Lectures,} no person shall be, or be received as a lecturer, or permitted, suffered, or allowed to preach as a lecturer, or to preach, or read any sermon or lecture in any church, chapel, or other place of public worship, within this realm of *England*, or the dominion of *Wales*, and town of *Berwick* upon *Tweed*, unless he be first approved, and thereunto licensed by the archbishop of the province, or bishop of the diocese, or (in case the see be void) by the guardian of the spiritualties, under his seal, and shall in the presence of the same archbishop, or bishop, or guardian, read the nine and thirty articles of religion mentioned in the statute of the thirteenth year of the late queen *Elizabeth*, with declaration of his unfeigned assent ^{13 El. c. 12.} to the same; (2) and that every person and persons who now is, or hereafter shall be licensed, assigned and appointed, or received as a lecturer, to preach upon any day of the week in any church, chapel or place of public worship within this realm of *England*, or places aforesaid, the first time he preacheth (before his sermon) shall openly, publicly, and solemnly read the common prayers and service in and by the said book appointed to be read for that time of the day, and then and there publicly and openly declare his assent unto, and approbation of the said book, and to the use of all the prayers, rites and ceremonies, forms and orders therein contained and prescribed, according to the form before appointed in this act; (3) and also shall upon the first lecture-day of every month afterwards, so long as he continues lecturer or preacher there, at the place appointed for his said lecture or sermon, before his said lecture or sermon, openly, publicly and solemnly read the common prayers and service in and by the said book appointed to be read for that time of the day at which the said lecture or sermon is to be preached, and after such reading thereof, shall openly and publicly, before the congregation there assembled, declare his unfeigned assent and consent unto, and approbation of the said book, and to the use of all the prayers, rites and ceremonies, forms and orders therein contained and prescribed, according to the form aforesaid; (4) and that all and every such person and persons who shall neglect or refuse to do the same, shall from thenceforth be disabled to preach the said, or any other lecture or sermon in the said, or any other church, chapel or place of public worship, until such time as he and they shall openly, publicly and solemnly read the common prayers and service appointed by the said book, and conform in all points to the things therein appointed and prescribed, according to the purport, true intent and meaning of this act.

Se^{ct}. 20. "Provided always, That if the said sermon or lecture be ^{to Lectures in} be preached or read in any cathedral or collegiate church or chapel, it ^{cathedral or} shall be sufficient for the said lecturer, openly at the time aforesaid, to de- ^{collegiate} ^{churches,} ^{clare}

clare his assent and consent to all things contained in the said book, according to the form aforesaid.

The penalty upon persons disabled, that preach.
Explained by 15 Ca. 2. c. 6. f. 7.

Seet. 21. "And be it further enacted by the authority aforesaid, That if any person who is by this act disabled to preach any lecture or sermon, shall during the time that he shall continue and remain so disabled, preach any sermon or lecture; that then for every such offence, the person and persons so offending shall suffer three months imprisonment in the common gaol without bail or mainprize; (2) and that any two justices of the peace of any county of this kingdom and places aforesaid, and the mayor or other chief magistrate of any city or town-corporate within the same, upon certificate from the ordinary of the place made to him or them of the offence committed, shall and are hereby required to commit the person or persons so offending, to the gaol of the same county, city, or town-corporate accordingly.

Common prayer to be read before every lecture, and the lecturer to be present.

Seet. 22. "Provided always, and be it further enacted by the authority aforesaid, That at all and every time and times when any sermon or lecture is to be preached, the common prayers and service in and by the said book appointed to be read for that time of the day, shall be openly, publicly and solemnly read by some priest or deacon, in the church, chapel or place of public worship where the said sermon or lecture is to be preached, before such sermon or lecture be preached; and that the lecturer then to preach shall be present at the reading thereof.

Proviso for sermons and lectures in the universities.

Seet. 23. "Provided nevertheless, That this act shall not extend to the university churches in the universities of this realm, or either of them, when or at such times as any sermon or lecture is preached or read in the said churches, or any of them, for, or as the public university sermon or lecture; but that the same sermons and lectures may be preached or read in such sort and manner as the same have been heretofore preached or read; this act, or any thing herein contained to the contrary thereof in any wise notwithstanding."

Leet.

LEET, *Leta*, *visus Franci plegii*, is otherwise called a law-day. *Smith de Rep. Ang. lib. 2. cap. 18.* and seems to have grown from the *Saxon leo*, which, as appears by the laws of king *Edward*, published by *Lambard*, num. 34. was a court of jurisdiction above the wapentake or hundred: many lords, together with their courts-baron, have likewise leets adjoined, and thereby do enquire of such transgressions as are subject to the enquiry and correction of this court, whereof you may read in *Kitchin*, from the beginning of his book to the fifth chapter, and *Britton*, cap. 28. But this court, in whose manor soever it be kept, is accounted the king's court,

court, because the authority thereof originally belongs to the crown. *Kitchin*, fol. 6. *Dyer*, fol. 64. saith, that this *leet* was first derived from the sheriff's turn. And it enquireth of all offences under high treason, committed against the crown and dignity of the king, though it cannot punish many, but must certify them to the justices of assize, by the statute of 1 *Ed.* 3. *cap.* ult. but what things are only inquirable, and what punishable, see *Kitchin* in the charge of a court leet, from fol. 8. to fol. 20. See also the statute 8 *Ed.* 2. and 4 *Inst.* fol. 261. *Hec est curia prisca illa*, (saith *Spelman*) *que inter Saxones ad Friburgos, decanias tenementales pertinebat*. The jurisdiction of bailiffs within the dutchy of Normandy, in the compass of their provinces, seems to be the same, or very like our *leet*, *cap.* 4. of the *Grand Customary*. *Leet* comes from the Sax. *Lat.* i. e. *cen-sura, arbitrium*; or from *Letan, censere, aestimare*. *Quod in hac olim curia de damnis aestimatur inter vicinos emergentibus, ut patet in LL. Edw. Conf.* *cap.* 10. See Sir William Dugdale's *Warwickshire*, fol. 2.

A court-leet is a court of record, having the same jurisdiction within some particular precinct, which the sheriff's torn hath in the county. *Finch.* 246. 2 *Hawk. P. C.* 72.

The stat. 18 *Ed.* 2. which shews of what things the sheriff's torn and court-leet shall have conuzance, does not confine their jurisdiction to those particulars enumerated in the statute. 4 *Inst.* 261. *Crompt. Jur.* 213.

No man can be within two leets at the same time, and in the same respect; therefore, he who resides within the precincts of a leet, the lord whereof doth duly hold his court, cannot be compelled to come to a superior leet, for any purpose which may as well be answered by his attendance at his own leet; but if a private leet be specially granted for two or three articles only, it seems that the inhabitants must attend the torn for all other matters; also a grand leet may prescribe to oblige a certain number of inhabitants in every town within its precinct, to appear at every such grand leet, to inquire of such offences as were omitted by the inferior; also, if a leet be seized in the king's hands, all who owed suit to it ought to come to the torn, &c. also the sheriff's torn, as an overseer of the leet, is to inquire whether the tithing be full, and may inquire of the concealments of offences inquirable in leets. 2 *Hawk. P. C.* 73. and several authorities there cited.

A court-leet shall be forfeited, not only by acts of gross injustice, but also by bare omissions and neglects, especially if often repeated, and without excuse. 2 *Hawk. P. C.* 73.

The caption of an indictment in a court leet, *ad cur' vis. Franc' pleg' cum cur' baron'*, &c. is good, for the words *cum cur' baron'* shall be rejected; for it shall be intended that the indictment was taken by the court, which alone hath the colour of authority to take it. 1 *Salk.* 195.

The not setting forth in the caption, whether the court was holden by grant or prescription, is helped by the multitude of precedents. 1 *Salk.* 200.

Stewards of courts leet and courts baron, shall not take any profits or perquisites, 1 *Jac.* 1. c. 5.

Letter.

Letter.

STAT. 9 Geo. 1. c. 22. and 27 Geo. 2. c. 15. See these two acts under title **Black-Act**.

Lewdness.

L EWDNESS, is punishable not only by fine and imprisonment, but also with such infamous punishment as to the court in discretion shall seem proper. 1 *Hawk. P. C.* 196.

This offence comes under the cognizance of the temporal law, as a common nuisance, not only in respect of its endangering the public peace, by drawing together dissolute and debauched persons, but also in respect of its apparent tendency to corrupt the manners of both sexes, by such an open profession of lewdness. 1 *Hawk. P. C.* 196.

A person was indicted for open lewdness, in shewing his naked body in a balcony, and other misdemeanors, and was fined 2000 marks, imprisoned for a week, and bound to the good behaviour for three years. 1 *Sid.* 168.

Libel.

L IBE L, (*libellus*) literally signifieth a little book, but by use it is the original declaration of any action in the civil law, 2 *H.* 5. 3. and 2 *Ed.* 6, 13. It signifies also a criminous report of any man cast abroad, or otherwise unlawfully published, and then called *famosus libellus*: and this either *in scriptis*, aut *sine scriptis*: *in scriptis* is, when an epigram or other writing is composed or published to another's disgrace, which may be done *verbis aut cantilenis*; as, where this is maliciously repeated or sung in the presence of others; or else *traditione*, when the *libel*, or any copy of it is delivered over to scandalize the party. *Famosus libellus sine scriptis* may be two-fold; 1 *Picturis*, as to paint the party in a shameful and ignominious manner; or, 2. *Signis*, as to fix a gallows or other ignominious signs at the door of the party, or elsewhere. 5 *Co. Rep. De famosis Libellis*.

A libel

A libel is defined a malicious declamation, expressed either in printing or writing, or by signs, pictures, &c. tending either to blacken the memory of one who is dead, or the reputation of one who is alive, and thereby exposing him to publick hatred, contempt and ridicule. 1 Hawk. P. C. 193. 5 Mod. 165.

This species of defamation is usually termed written scandal, and thereby receives an aggravation, in that it is presumed to have been entered upon with coolness and deliberation, and to continue longer, and propagate wider and farther than any other scandal. 5 Co. 125.

But it is clearly agreed, that not only written or printed scandal comes within the notion of a libel, but also may be applied to any defamation whatsoever, expressed either by signs or pictures; as by fixing up a gallows at a man's door, or elsewhere, or by painting him in a shameful or ignominious manner, as by exposing a man and his wife by a skimmington or riding, though a special custom is alledged for such practice. 5 Co. 125. Skin. 123. Raym. 401. 3 Keb. 378.

And since the chief cause, for which the law severely punishes all offences of this nature, is a direct tendency of them to a breach of the public peace, by provoking the parties injured, and their friends and families, to acts of revenge, which it would be impossible to restrain by the severest laws, were there no redress from public justice for injuries of this kind, which, of all others, are more sensibly felt; and since the plain meaning of such scandal, as is expressed by signs or pictures, is as obvious to common sense, and as easily understood by every common capacity, and altogether as provoking as that which is expressed by writing or printing, why should it not be equally criminal? 1 Hawk. P. C. 193.

What Degree of Defamation will amount to a Libel; and what Certainty is requisite in the Matter and Application of a Libel.

As every person desires to appear agreeable in life, and must be highly provoked by such ridiculous representations of him, as tend to lessen him in the esteem of the world, and take away his reputation, which to some men is more dear than life itself: hence it hath been held, that not only charges of a flagrant nature, and which reflect a moral turpitude on the party, are libellous, but also such as set him in a scurrilous ignominious light; for these equally create ill blood, and provoke the parties to acts of revenge and breaches of the peace. 5 Co. 125. 1 Keb. 293. Moor. 627. 1 Rol. Abr. 37.

Hence it hath been held, that words, though not scandalous in themselves, yet if published in writing, and tending in a degree to the discredit of a man are libellous, whether such words defame private persons only, or persons employed in a public capacity; in which latter case they are said to receive an aggravation, as they tend to scandalize the government, for reflecting on those who are intrusted with the administration of public affairs, which doth not only endanger the public peace, as all other libels do, by stirring up the parties immediately concerned in it to

acts of revenge, but also have a direct tendency to breed in the people a dislike of their governors, and incline them to faction and sedition. *Hard.* 470. *Skin.* 123. 5 *Co.* 125. 2 *Roll. Rep.* 86. 1 *Hawk. P. C.* 94.

As where a person delivered a ticket up to the minister after sermon, wherein he desired him to take notice, that offences passed now without controul from the civil magistrate, and to quicken the civil magistrate to do his duty, &c. and this was held to be a libel, though no magistrates in particular were mentioned, and though it was not averred that the magistrates suffered those vices knowingly. 1 *Sid.* 219. 1 *Keb.* 773. *The King v. Pym.*

A. gunsmith, published an advertisement in a common news-paper, that he had invented a short kind of gun that shot as far as others of a longer size, and that he was made gunsmith to the prince of *Wales*; and *B.* another gunsmith, counter-advertised, that whereas, &c. reciting the former paragraph, he desired all gentlemen to be cautious, for that the said *A.* durst not engage with any artist in town, nor ever did make such an experiment, except out of a leather gun, as any gentleman might be satisfied at the *Cross Guns* in *Long Acre*, the said *B.*'s house. And the court held, that though *B.* or any other of the trade, might counter-advertise what was published by *A.* yet that that should have been done without any general reflections on him in the way of his business; that the advice to all gentlemen to be cautious, was a reflection on his honesty, as if he would deceive the world by a fictitious advertisement, and the allegation, that he would not engage with an artist, was setting him below the rest of his trade, and calling him a bungler in general terms, and not relative to the precedent matter, and that the words "except out of a leather gun," was charging him with a lie, the word gun being vulgarly used for a lie, and gunner for a liar: and that therefore these words were libellous, and gave judgment accordingly; and herein the court held, that words, though not scandalous in themselves, yet being published in writing, and tending any way to the party's discredit, were actionable, and that all words were to be construed *secundum subjectam materiam*, and to be understood by the court in the same sense that others do. 3 *Bac. Abr.* 491. *Passch.* 4 *Geo.* 2. in *B. R. Harman v. Delany.*

But though every species and degree of calumny and detraction of this kind are deemed odious in the eye of the law, and punishable either by civil action or criminal prosecution in most cases, at the election of the party injured: yet the court of King's Bench, whose jurisdiction herein is founded upon the necessity of preventing quarrels and ill blood, and which deals with this offence as of dangerous consequence to, and destructive to the peace of this nation, always exercises a discretionary power in granting an information for an offence of this nature, and will, in many cases, leave the party to his ordinary remedy; as where the application is made after a great length of time; so where the matter complained of as a libel happens to be true; so where the granting the information would be a discouragement to learned inquiries; or where the matter complained of was intended for reformation, not defamation. 3 *Bac. Abr.* 492.

So where a man advertises in a public news-paper, that his wife had eloped from him, and cautioned all persons from trusting her; and an information for a libel being moved for, it was denied, because it was the only way the husband could take to secure himself. 3 *Bac. Abr.* 492. *The King. v. Enes, 5 Geo. 2. in B. R.*

So where it was advertised in one of the daily papers, that lady *Mordington* kept an assembly in *Moorfields*, and it being counter-advertised by my lord's order, that the person calling herself lady *Mordington* was an impostrix, and that there was no such person except his wife, who always lived with him; the court refused to grant an information; for though she be called an impostrix, yet that relates to her as assuming the title of lady *Mordington*, and which she is alledged not to have any right to; and therefore in this respect may well be called an impostrix. 3 *Bac. Abr.* 492. *The King v. Jenneaur, Pasch. 8 Geo. 2. in B. R.*

A writing was directed to general *Wills*, and the four principal officers of the guards, to be presented to his majesty for redress; the paper contained the defendant's case, that he furnished the guard at *Whitehall* with fire and candle, for which the government owed him 350*l.* that he obtained a warrant for his money, and captain *Carr* (the prosecutor) told him, that if he would assign the warrant, he would procure him the money; the warrant was assigned, and the money paid to *Carr*, who refused paying it to the defendant; and the question was, if an information should be granted; and the court held it no libel, but a representation of an injury, drawn up in a proper way for redress, without any intention to asperse the prosecutor; and though there be a suggestion of a fraud, yet this is no more than what is in every bill in chancery, which was never held libellous, if relative to the subject-matter. 3 *Bac. Abr.* 492. *The King v. Bayley, Hill. 8 Geo. 2. in B. R.*

Here it may be proper to insert the remarkable case of parson *Prick*, who in a sermon recited a story out of *Fox's Martyrology*, that one *Greenwood*, being a perjured person, and a great persecutor, had great plagues inflicted on him, and was killed by the hand of God; whereas in truth he was never so plagued, and was himself present at that sermon; and he thereupon brought his action upon the case, for calling him a perjured person; and the defendant pleaded Not guilty; and this matter being disclosed upon the evidence, *Wray Ch. Just.* delivered the law to the jury, that it being delivered but as a story, and not with any malice or intention to slander any person, he was not guilty of the words maliciously, and so was found Not guilty. *Cro. Jac.* 90, 91.

As to the certainty requisite in the matter and application of a libel, it seems to be now agreed, that not only scandal expressed in an open and direct manner, but also such as is expressed in allegory and irony amounts to a libel, and that the judges are to understand it in the same manner as others do, without any strained endeavours to find out loop holes or to palliate the offence, which in some measure would be to encourage scandal; as where a writing in a taunting manner, reckoning up several acts of public charity done by one, says, You will not play the Jew, nor

the hypocrite, and so goes on, in a strain of ridicule, to insinuate that what he did was owing to his vain glory; or where a writing, pretending to recommend to one the characters of several great men for his imitation, instead of taking notice of what they are generally esteemed famous for, pitched on such qualities as their enemies charge them with the want of; as by proposing such a one to be imitated for his courage, who is known to be a great statesman, but no soldier; and another to be imitated for his learning, who is known to be a great general, but no scholar, &c. which kind of writing is as well understood to mean only to upbraid the parties with the want of these qualities, as if it had directly and expressly done so. 5 Co. 125. That a libel may be as well by descriptions and circumlocutions as in express terms. *Poph.* 252. *Hob.* 215. 1 *Hawk. P. C.* 193-4.

And from the same foundation it hath also been resolved, that a defamatory writing expressing only one or two letters of a name, in such a manner that from what goes before, and follows after, it must needs be understood to signify such person in the plain, obvious, and natural construction of the whole, and would be perfect nonsense if strained to any other meaning, is as properly a libel as if it had expressed the whole name at large; for it brings the utmost contempt upon the law, to suffer its justice to be eluded by such trifling evasions; and it is a ridiculous absurdity to say, that a writing, which is understood by every the meanest capacity, cannot possibly be understood by a judge and jury. 1 *Hawk. P. C.* 194. *Hart's case.*

But it is said, that no writing whatsoever is to be esteemed a libel, unless it reflect upon some particular person; and that a writing full of obscene ribaldry, without any kind of reflection on any one, is not punishable at all by any prosecution at common law; but the author may be bound to his good behaviour, as a scandalous person of evil fame. 1 *Hawk. P. C.* 195.

But a scandal published of three or four, or any one or two of them, is punishable at the complaint of one or more, or all of them. *Poph.* 252, 254.

The defendant was charged in an information, with writing a libel against the Protestant religion and bishops, *innuendo* the bishops of *England*; he was found guilty; and in an arrest of judgment it was offered, that the bishops libelled were not *English* bishops, nor could the *innuendo* support such a construction; but the court took upon them to understand the libel in that sense, and over-ruled the exception. 3 *Mod.* 68. *The King v. Baxter.*

An information was prayed for publishing a paper containing an account of a murder on a *Jewish* woman and her child, by certain *Jews* lately arrived from *Portugal*, and living near *Broad-street*, because the child was begotten by a Christian; and the affidavit set forth, that several persons mentioned therein, who were recently arrived from *Portugal*, and lived near *Broad-street*, were attacked by multitudes in several parts of the city, barbarously treated, and threatened with death, in case they were found abroad any more; and it was objected, that no information could be granted in this case, because it did not appear who in particu-
lar

lar the persons reflected on were; and for this was cited *The King v. Orme, Trin. 11 W. 3.* Where an indictment was exhibited for a libel called *The Lady's Invention*, and allèdged to the scandal of several ladies unknown; and after verdict for the king, judgment was arrested, because it did not appear who the persons reflected on were; *sed per curiam*, admitting that an information for a libel may be improper, yet the publication of this paper, is deservedly punishable in an information for a misdemeanor, and that of the highest kind; such sort of advertisements necessarily tending to raise tumults and disorders among the people, and inflame them with a universal spirit of barbarity against a whole body of men, as if guilty of crimes scarce practicable, and wholly incredible; and in this case was cited the case of *The King and Franklin*, where, tho' only the word *ministers* was used in the libel, yet by suitable averments in the information, and proof made of them to the jury, they found those ministers to be ministers of state to his present majesty, and the defendant guilty. 3 *Bac. Abr.* 494. *King v. Osborne. Trin. 5 Geo. 2. in B. R.*

Whether Proceedings in a Court of Justice are libellous; and whether any Thing of this Kind can be justified.

It seems to be clearly agreed, that no proceeding in a regular course of justice will make the complaint amount to a libel; for it would be a great discouragement to suitors to subject them to public prosecution, in respect of their applications to a court of justice; and the chief intention of the law in prohibiting persons to revenge themselves by libels, or any other private manner, is to restrain them from endeavouring to make themselves their own judges, and oblige them to refer the decision of their grievances to those whom the law has appointed to determine them. *Dyer* 285. 2 *Inst.* 228. *Telv.* 117. 2 *Bulf.* 269. *Godb.* 344. *Palm.* 145, 188. 1 *Vent.* 23. 1 *Hawk. P. C.* 194.

Therefore it hath been resolved, that no false or scandalous matter contained in a petition to a committee of parliament, or in articles of the peace exhibited to justices of peace, are libellous. 1 *Lev.* 240. 1 *Sid.* 414. 2 *Keb.* 832. 4 *Co.* 14. 1 *Hawk. P. C.* 194.

Also it is held, that no presentment of a grand jury can be a libel, not only because persons who are supposed to be returned without their own seeking, and are sworn to act impartially, shall be presumed to have proper evidence for what they do, but also because it would be of the utmost ill consequence any way to discourage them from making inquiries with that freedom and readiness which the public good requires. *Moor.* 627. 1 *Hawk. P. C.* 195.

And it is holden by some, that no want of jurisdiction in the court to which such a complaint shall be exhibited will make it a libel; because the mistake of the court is not imputable to the party, but his counsel; but herein it is said by Mr. *Hawkins*, that if it shall manifestly appear from the whole circumstances of the case, that a prosecution is entirely false, malicious and groundless, and commenced not with a design to go thro'

thro' with it, but only to expose the defendant's character, under the shew of a legal proceeding, there can be no reason why such a mockery of public justice should not rather aggravate the offence than make it cease to be one, and make such scandal a good ground of an indictment at the suit of the king, as it makes the malice of their proceeding a good foundation of an action on the case at the suit of the party, whether the court had a jurisdiction of the cause or not. 2 *Keb.* 832. 4 *Co.* 14. 1 *Hawk. P. C.* 194.

It seems to be clearly agreed, that in an indictment or criminal prosecution for a libel, the party cannot justify that the contents thereof are true, or that the person upon whom it is made had a bad reputation; since the greater appearance there is of truth in any malicious invective, so much the more provoking it is; for, as my lord *Coke* observes, in a settled state of government the party grieved ought to complain for every injury done him, in the ordinary course of law, and not by any means to revenge himself by the odious course of libelling or otherwise. 5 *Co.* 125. *Hob.* 253. *Moor* 627. 1 *Hawk. P. C.* 194.

Also it seems now settled, that no scandal in writing is any more justifiable in a civil action brought by the party to vindicate the injury done, than in an indictment or information at the suit of the crown; for tho' in actions for words, the law, thro' compassion, admits the truth of the charge to be pleaded as a justification, yet this tenderness of the law is not to be extended to written scandal, in which the author acts with more coolness, and deliberation gives the scandal a more durable stamp, and propagates it wider and further; whereas in words men often in a heat and passion say things which they are afterwards ashamed of, and tho' they seem to act with deliberation, yet the scandal sooner dies away, and is forgotten; and therefore from the greater degree of mischief and malice attending the one than the other, the law allows the party to justify in an action for words, tho' not for written scandal; from whence it follows, that the only favour truth affords in such a case is, that it may be shewn in mitigation of damages in an action, and of the fine upon an indictment or an information. 3 *Bac. Abr.* 495. *The King v. Roberts, Mich.* 8 *Geo.* 2. in *B. R.* agreed *per cur.* in a case for publishing a libel on Mr. *Branley*, recorder of *Warwick*.

Who shall be deemed the Author or Composer of a Libel; who the Publisher; and how the Offenders shall be punished.

It has been already observed, that a libel may be expressed not only by printing or writing, but also by signs or pictures; but it seems that some of those ways are essentially necessary; and it is laid down in *Lamb's case*, that every person convicted of a libel must be the contriver, procurer or publisher thereof. 9 *Co.* 59. *Moor* 813. *Lamb's case*.

It hath been strongly urged, that he who writes a libel dictated by another, is not guilty of the composing and making thereof, because it appears that another is the author or contriver; but herein the court held,

that the writing being the essential part of a libel, the reducing it into writing in the first instance was a making, and differed from a transcribing; and, according to the report of this case, in *5 Mod.* it was held, that if one dictates and another writes, both are guilty of making it, for he shews his approbation of what he writes. So if one repeats, another writes a libel, and a third approves what is written, they are all makers of it, as all who concur and assent to the doing of an unlawful act are guilty; and murdering a man's reputation by a libel, may be compared to murdering a man's person, in which all who are present and encourage the act are guilty, tho' the wound was given by one only. *Carth. 405. 5 Mod. 163. 10. 167. The King v. Paine.*

Also it hath been held, that transcribing and collecting libellous matter is highly criminal, though it be not found that the party composed or published it; for his having it in readiness for that purpose when occasion served, or its falling into such hands after his death as may publish it, might be injurious to the government. *Carth. 407. 2 Salk. 417. The King. v. Bear.*

It is said by *Holt, Ch. J.* that when a libel appears under a man's handwriting, and no other author is known, he is taken in the manner, and it turns the proof upon him; and if he cannot produce the composer, it is hard to find that he is not the very man. *2 Salk. 419.*

And it is said to have been resolved by the court, that in libels making is the genius, composing or contriving is one species, writing a second species, and procuring to be written a third species: and finding a man guilty of writing only, is finding him guilty of one species of making. *2 Salk. 419.*

But where in some cases the writing of a libel may be a lawful or innocent act, as by the clerk that draws the indictment, or by a student who takes notes of it, because it is not done *ad infamiam* of the party; but abstractedly considered, the writing the copy of a libel is writing a libel, because such copy contains all things necessary to the construction of a libel, *viz.* the scandalous matter, and the writing: and it has the same pernicious consequence, for it perpetuates the memory of the thing, and some time or other comes to be published. *2 Salk. 418.*

It seems to be agreed, that not only he who publishes a libel himself, but also he who procures another to do it, is guilty of the publication; and it is held not to be material, whether he who disperses a libel knew any thing of the contents or effects of it or not; for that nothing would be more easy than to publish the most virulent papers with the greatest security, if the concealing the purport of them from an illiterate publisher would make him safe in dispersing them. *9 Co. 59. Moor. 627, 1 Hawk. P. C. 195.*

And on this foundation it hath been constantly ruled of late, that the buying of a book or paper containing libellous matter in a bookseller's shop, is sufficient evidence to charge the master with the publication, although it does not appear that he knew of any such books being there, or what the contents thereof was; and it will not be presumed that it
was

was brought and sold there by a stranger, but the master must, if he suggests any thing of this kind in his excuse, prove it. *The King v. Nutt*, *Hil. 2 Geo. 2.* so ruled on evidence at *Guildhall*, per *Raymond* Chief Justice.

The reading of a libel in the presence of another, without knowing it before to be a libel, or the laughing at a libel read by another, or the saying that such a libel is made of J. S. whether spoken with or without malice, amounts not to a publication of it. *9 Co. 59. Moor 813. 1 Hawk. P. C. 196.*

Also it is held, that he who repeats part of a libel in merriment, without any malice or purpose of defamation, is no way punishable; but of this *Hawkins* makes a doubt, for that jests of this kind are not to be endured, and the injury to the reputation of the party grieved is no way lessened by the merriment of him who makes so light of it. *Moor 627. 1 Hawk. P. C. 196.*

But it seems to be agreed, if he who had either read a libel himself, or hath heard it read by another, do afterwards maliciously read or repeat any part of it in the presence of others, or lend or shew it to another, he is guilty of an unlawful publication of it. *Moor 813. 9 Co. 59. 1 Hawk. P. C. 195.*

It is said by my lord *Coke* in the case of *De libellis famosis*, to have been resolved, that if one finds a libel, (and would keep himself out of danger) if it be composed against a private man, the finder may either burn it, or presently deliver it to a magistrate; but if it concern a magistrate or other public person, the finder might presently deliver it to a magistrate, to the intent that by examination and industry the author may be found out and punished. *5 Co. 125.*

It seems to be a matter of doubt, whether the sending an abusive letter, filled with provoking language to another, will bear an action as for a libel, because here is no publication; but it seems to be clearly agreed, that the sending such letter, without other publication, is an offence of a public nature, and punishable as such, inasmuch as it tends to create ill blood, and causes a disturbance of the public peace; and if the bare making of a libel be an offence, whether it be published or not, as it seemeth to be holden, surely the sending of it to the party reflected on must be a much greater offence. *4 Inst. 180. 3 Inst. 174. Hob. 62. 215. 12 Co. 34. Poph. 136. Raym. 201. 1 Lev. 139. 1 Keb. 931. 1 M. 58. Skin. 123-4.*

And on this foundation the court of King's Bench granted an information against a person for sending an abusive letter to Mr. *Bernardiston*, therein calling him rascal and fool; although he swore that he wrote this to the party himself, and never made it public, being only a piece of private resentment; but the court held, that this method provoked persons to duelling, that the writing and sending was a good publication, and that the intent of the party shall not be explained by himself. *3 Bac. Abr. 497. The King v. Pillborough. Mich 5. Geo. 2. in B. R.*

If one deliver a paper full of reflections on any person in nature of a petition to a committee of parliament, to any other persons except the members

members of parliament, he may be punished as the publisher of a libel, in respect of such dispersing thereof among those who have nothing to do with it. 1 *Sand.* 133. 1 *Lev.* 240. 1 *Sid.* 414. 1 *Keb.* 832.

But it hath been held, that the bare printing of a petition to a committee of parliament (which would be a libel against the party complained of, if it were made for any other purpose than as a complaint in a course of justice,) and delivering copies thereof to the members of the committee, shall not be looked upon as the publication of a libel, inasmuch as it is justified by the order and course of proceedings in parliament, whereof the king's court will take judicial notice. 1 *Hawk. P. C.* 196. and the authorities *supra*.

There can be no doubt but that a person who writes or publishes a libel is subject to the action of the party injured, in which damages shall be recovered; and that being convicted on an indictment or information, shall pay such fine, and also suffer such corporal punishment as to the court in discretion shall seem proper, according to the heinousness of the crime, and the circumstances of the offenders. *Cro. Car.* 175.

Linen Cloth.

STAT, 1 *Eliz. c.* 12. [*A. D.* 1558. *Intituled*] “An act against the deceitful using of linen cloth.

“Where certain evil-disposed and deceitful persons, using to buy and The inconveniencies ensuing the deceitful using of linen cloth.
ingross into their hands great store of linen cloth, do use to cast the pieces of cloth over a beam or piece of timber made for their purpose, and do by sundry devices rack, stretch and draw the same both of length and breadth: and that done, do then with battledoors, pieces of timber and wood, and other things, fore beat the same, ever casting thereupon certain deceitful liquors mingled with chalk and other like things, whereby the said cloth is not only made to seem much finer and thicker to the eye than it is indeed, but also the threads thereof be loosed and made weak, that after three or four washings it will scarcely hold together, to the great deceit, hindrance and loss of the subjects of this realm: (2) Be it therefore enacted by the authority of this present parliament, That if any person or persons, shall hereafter willingly use or cause to be used the afore said deceits, or any other act or acts, mean or means, to, in or with any kind of linen cloth, whereby the same shall be deceitful or worse, to and for the good use thereof; that then the said cloth shall be forfeited, and the offender therein to be punished by one month's imprisonment at the least, and shall pay such fine as shall be af-

The penalty for stretching or impairing of linen cloth.

felled for his or their offence or offences, by the justices before whom he or they shall be condemned, according to the tenor of this act.

What justices may hear and determine the offences aforesaid.

Señ. 2. “ And be it further enacted by the authority aforesaid, That all and every the justices of oyer and determiner, and justices of assizes in all their sessions, and all justices of peace in every county and place of this realm, or three of them at the least, whereof one to be of the *quorum*, shall have full power and authority to enquire, hear and determine the offences aforesaid in their sessions, by information, indictment or upon the traverse of any presentment or indictment found before the said justices, or any of them.

In what sort he that seizeth an offender's cloth, shall pursue his suit against him.

Señ. 3. “ And be it further enacted by the authority aforesaid, That if any person or persons, shall at the next sessions of the peace after the said seizure, (to be kept within the shire or place where the seizure was made, or before two justices of peace, whereof one to be of the *quorum*) make due information of the offence and of the seizure of the said cloth: (2) or else shall procure the offenders to be thereof indicted at the said next sessions after the said seizure; (3) and shall also be bound before the said justices by recognizance or obligation, to the use of the queen's majesty, her heirs and successors, in such form as the said justices, or any of them shall think meet for the greatness of the matter, and to pursue the same matter with effect, and to give evidence as of right appertaineth, and also to pay and give the moiety of all that he or they shall so recover and receive, to the sheriff or other accomptant, to the use of the queen's majesty, her heirs and successors; (4) and the one half of all the forfeitures and fines of and for the premises, to be unto the queen's majesty, her heirs and successors, and the other moiety to him or them that shall make information, or procure indictments of and for the premises, and shall follow the same with effect.

Certificate of the estreat into the exchequer.

Señ. 4. “ And further, be it ordained and enacted by the authority aforesaid, That the justices before whom any such offence shall be tried, shall certify the same by their estreat into the exchequer, at the least yearly at *Michaelmas*, as they be bound to do other their estreats; and, upon that certificate, the barons of the exchequer to have full power and authority to make process for so much thereof as by this statute shall appertain to the queen's majesty, in like manner and form as they only do for any other fines and amercements so certified before them.”

STAT. 15 *Car. 2. c. 15.* [*A. D. 1663. Intituled*] “ An act for encouraging the manufactures of making linen cloth and tapestry.”

The inconvenience by importing foreign materials of linen and tapestry-hangings.

“ Whereas vast quantities of linen cloth, and other manufactures of hemp and flax, and of tapestry-hangings, are daily imported into this kingdom from foreign parts, to the great detriment and impoverishment thereof, the monies and quick-stock of this kingdom being thereby daily exhausted and diminished, and the poor thereof unemployed, while the materials for the making of such hangings are here more plentiful, and better and cheaper than in those places from whence they are imported; and

and flax and hemp might be had here in great abundance, and very good, if by setting up the manufactures of such commodities as are made thereof, it would be taken off the hands of such as sow and plant the same:

Señ. 2. “ For the encouragement therefore of those manufactures, Be Encourage-
it enacted, and it is hereby enacted by the king’s most excellent majesty, ment of Eng-
by and with the advice and consent of the lords spiritual and temporal, lish manufac-
and commons in this present parliament assembled, and by the authority tures.
thereof, That from and after the first day of *October* next ensuing, It shall and may be lawful for any person or persons whatsoever, native or foreigner, freely and without paying any acknowledgment, fee or other gratuity for the same, in any place of *England* or *Wales*, privileged or unprivileged, corporate or not corporate, to set up and exercise the trade, occupation or mystery of breaking, hickling or dressing of hemp or flax; In the occupa-
as also for making and whitening of thread; as also of spinning, weaving, tion of dress-
making, whitening or bleaching of any sort of cloth whatsoever made of ing and using
hemp or flax only: as also the trade, occupation or mystery of making of hemp and
of twine or nets for fishery, or of stoving of cordage; as also the trade, flax.
occupation or mystery of making any sort of tapistry-hangings; any law, Making of
statute or usage to the contrary in any wise notwithstanding. tapistry-
hangings.

Señ. 3. “ And all foreigners that shall really, and *bona fide* set up and use any of the trades and manufactures aforesaid, by the space of three years in this kingdom of *England*, dominion of *Wales*, and town of *Berwick* upon *Tweed*, shall from thenceforth, taking the oaths of allegiance and supremacy before two justices of the peace near unto their dwellings, who are hereby authorized to administer the same, enjoy all privileges whatsoever as the natural-born subjects of this kingdom. Foreigners
may use those
trades, and
enjoy all pri-
vileges as na-
tural-born
subjects.
Oath of alle-
giance and
supremacy.

Señ. 4. “ And it is hereby enacted and declared, That such foreigners as shall exercise any of the trades aforesaid by virtue of this act, shall not at any time be liable to any other or greater taxes, payments or impositions, than such as are or shall be paid by his majesty’s natural-born subjects, unless in case they shall use and exercise merchandize into, and from foreign parts; in which case they shall be liable to pay such customs as have usually been paid by aliens during the space of five years next ensuing, and no longer.”

STAT. 17 *Geo. 2. c. 30.* [*A. D. 1744. Intituled*] “ An act for the more effectual preventing of the affixing of counterfeit stamps to foreign or other linens.”

“ Whereas certain stamps are required by law to be put upon linens made in *Scotland* and *Ireland*, the better to ascertain the quality of such manufactures: and whereas of late years there has been a practice to counterfeit such stamps, and affix the same to foreign linens, in order to vend them as the manufactures of *Scotland* and *Ireland*, to the gross deceit and imposition of the buyers, and to the great discredit of the said manufactures: and whereas there has also been a practice, when linens of the manufacture of *Ireland* have been mildewed or soiled, to rebleach

Penalty on putting counterfeit stamps on foreign linens;

and packing up, or exposing them to sale.

Penalty on fixing counterfeit stamps on British or Irish linens;

and packing up, or exposing them to sale.

Offenders to be convicted on oath of one witness before a justice.

Penalties to be recovered by distress and sale.

For want of distress offender to suffer six months imprisonment.

the said linens, and then to affix counterfeit stamps thereto, in order to vend them as linens duly stamped: for remedy whereof, be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That if any person or persons shall, after the twenty-fourth day of *June*, one thousand seven hundred and forty-four, affix, or cause, or procure to be affixed any stamp or stamps, in imitation of the stamp or stamps put upon the linens of the manufacture of *Scotland* or *Ireland*, or any foreign linens imported into this kingdom, such person or persons so offending, shall for each and every such offence, being convicted thereof, in the manner herein after mentioned, severally forfeit the sum of five pounds for each piece of linen so stamped, or caused or procured to be stamped; and if any person or persons shall, after the said twenty-fourth day of *June*, sell, expose to sale, or pack up for sale, any foreign linens, knowing them to be so stamped as aforesaid, as the manufacture of *Scotland* or *Ireland*, such person or persons so offending, and being thereof convicted in the manner herein after mentioned, shall forfeit the said linens, and the sum of five pounds for each piece thereof so sold, exposed to sale, or packed up for sale, as aforesaid; and in case any person or persons shall, after the twenty-fourth day of *June*, affix any counterfeit stamp or stamps upon any linens of the manufacture of *Great Britain* or *Ireland*, in order to vend the same as linens duly stamped, such person or persons so offending, and being convicted thereof in the manner herein after mentioned, shall forfeit the sum of five pounds for every piece of linen so stamped as aforesaid; and in case any person or persons shall, after the said twenty-fourth day of *June*, sell, expose to sale, or pack up for sale, any such linens, knowing the same to be so stamped as aforesaid, such person or persons so offending, and being thereof convicted, in the manner herein after mentioned, shall forfeit the said linens, and the sum of five pounds, for each piece thereof so sold, exposed to sale, or packed up for sale, as aforesaid.

Sec. 2. " And be it further enacted by the authority aforesaid, That it shall and may be lawful for any one or more justice or justices of the peace for the county, riding, division, city, town, or place, where any offence shall be committed against this act, to convict the party or parties offending, upon the oath of one or more credible witness or witnesses (which oath such justice or justices are hereby empowered and required to administer) and upon such conviction to grant a warrant or warrants, under his or their hand and seal, or hands and seals, to levy and recover the said respective penalties and forfeitures by distress and sale of the offenders goods and chattels, rendering the overplus, if any there shall be, after deducting the charges of such distress and sale, to the owner or owners thereof; and in case no goods or chattels of the party or parties so offending can be found, or there shall not be goods or chattels sufficient to pay such penalties and forfeitures, any one or more of such justices of the peace shall, upon proof thereof made upon oath (which oath

he

he and they is and are hereby impowered and required to administer) before him or them, by the person or persons who shall have the execution of the warrant or warrants for levying such distrefs, commit the party or parties offending to the gaol of the county, riding, division, city, town, or place, where the offence shall be committed, there to remain without bail or mainprize for the space of fix months, unless such penalties and forfeitures shall be sooner paid and satisfied; which said penalties and forfeitures shall go and be applied to the use of the informer or informers, first deducting out of the same the sum of two shillings in the pound, to be paid to the constable or other officer respectively, who shall execute the warrant or warrants for levying and recovering the said penalties and forfeitures.”

Penalties to go to the informer, deducting 2s. in the pound for the constable.

STAT. 18 Geo. 2. c. 27. [*A. D. 1745, intituled*] “An act for the more effectually preventing the stealing of linen, fustian, and cotton goods and wares, in buildings, fields, grounds, and other places used for printing, whitening, bleaching, or drying the same.”

“Whereas many doubts and difficulties have arisen upon the construction of an act passed in the fourth year of the reign of his present majesty, intituled, *An act to prevent the stealing of linen, fustian, and cotton goods* 4 Geo. 2. c. 16.

and wares, from fields, grounds, and other places, used for whitening, bleaching, or drying the same; in regard the said act doth not express and mention, with sufficient certainty, the respective goods and wares, the stealing whereof from the respective places therein mentioned and described, is by the said act intended to be prevented, whereby the good and wholesome ends proposed by the said act have in a great measure been frustrated, and by means thereof, many of his majesty's good subjects have been greatly injured in their properties, and put to very great expences and charges in watching the same, which nevertheless hath hitherto proved ineffectual: for remedy whereof, and for the more effectual preventing of thefts, frequently committed in buildings, fields, grounds, and other places used for printing, whitening, bleaching, or drying of linen, fustian, and cotton goods or wares for the future; may it please your majesty, that it may be enacted; and be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That all and every person and persons, who at any time after the first day of *June*, one thousand seven hundred and forty five, shall by day or night feloniously steal any linen, fustian, callico, cotton, cloth, or cloth worked, woven, or made of any cotton, or linen yarn mixed, or any thread, linen or cotton yarn, linen or cotton tape, inkle, filleting, laces, or any other linen, fustian, or cotton goods or wares whatsoever, laid, placed, or exposed to be printed, whitened, bowked, bleached or dried in any whitening or bleaching croft, lands, fields, or grounds, bowking-house, drying-house, printing-house, or other building, ground, or place, made use of by any callico

Whoever shall steal linen, &c. laid to be printed, bleached, &c.

printer, whittler, crofter, bowker, or bleacher, for printing, whitening, bowking, bleaching, or drying of the same, to the value of ten shillings, or who shall aid or assist, or shall wilfully or maliciously hire or procure any other person or persons to commit any such offence, or who shall buy or receive any such goods or wares so stolen, knowing the same to be stolen as aforesaid, being lawfully convicted thereof, shall be, and shall be guilty of felony, and every such offender shall suffer death, as in cases of felony, without benefit of clergy; any law or usage to the contrary notwithstanding.

The court may order such offenders to be transported for 14 years.

Sec. 2. " Provided always, That in case the judge or court, by and before whom any such offender or offenders shall be tried and convicted, shall think it reasonable, upon the circumstances of the case, that such offender or offenders, or any of them, instead of suffering death, should be transported to some of his majesty's colonies or plantations beyond the seas; it is hereby further enacted, That in every such case, it shall and may be lawful to and for such judge or court, and he or they shall hereby have full power and authority, instead of giving judgment of death against such offender or offenders, as in the cases of felony, without benefit of clergy, in manner herein before directed, to order such offender or offenders, being tried and convicted as aforesaid, to be transported to any of his majesty's colonies or plantations in *America*, for the space of fourteen years, upon the like terms and conditions, and by the same ways and means, and in like manner, as any other felons may or are to be transported to any of his majesty's said colonies or plantations, by force or virtue of any law for that purpose now in force; any thing in this act contained to the contrary notwithstanding.

Such offenders breaking gaol, or returning, to suffer death.

Sec. 3. " And be it further enacted by the authority aforesaid, That if any such offender or offenders aforesaid, who shall be so ordered for transportation by, or by virtue of this act, shall break gaol, or escape thereout, before such transportation, or shall return into, or be at large within any part of this kingdom of *Great Britain*, without some lawful cause, before the expiration of the said term of fourteen years, for which such offender or offenders shall be ordered to be transported as aforesaid; that then, and in such case, all and every such offender or offenders, being thereof lawfully convicted, shall suffer death as felons, and have execution awarded against them as persons attainted of felony, without benefit of clergy.

This act to commence 1 June, 1745; and the act 4 Geo. 2. c. 16. repealed.

Sec. 4. " And it is further enacted by the authority aforesaid, That this act shall be deemed to commence from the said first day of *June*, in the year of our Lord one thousand seven hundred and forty-five; and from that time the said act made in the fourth year of the reign of his present majesty, intituled, *An act to prevent the stealing of linen, fustian, and cotton goods and wares from fields, grounds, and other places, used for whitening, bleaching or drying the same*, shall be, and is hereby repealed."

STAT. 18 Geo. 2. c. 36. STAT. 21 Geo. 2. c. 26. STAT. 32 Geo. 2. c. 32. and STAT. 4 Geo. 3. c. 37. See these acts under title **Cambricks.**

Lord's

Lord's Day.

STAT. 1 *Eliz. c. 2. sect. 14.* See title **Common Prayer.**

STAT. 1 *Jac. 1. c. 22. sect. 28, 46, 50.* See title **Leather.**

STAT. 3 *Jac. 1. c. 4. sect. 27, 28.* See **Popery.**

STAT. 1 *Car. 1. c. 1. [A. D. 1625, intituled]* "An act for punishing divers abuses committed on the *Lord's Day*, called *Sunday*."

"Forasmuch as there is nothing more acceptable to *God* than the true and sincere service and worship of him according to his holy will, and that the holy keeping of the Lord's day is a principal part of the true service of God, which in very many places of this realm hath been, and now is prophaned and neglected by a disorderly sort of people, in exercising and frequenting bear-baiting, bull-baiting, interludes, common plays, and other unlawful exercises and pastimes upon the Lord's day; and for that many quarrels, bloodsheds, and other great inconveniencies have grown by the resort and concourse of people going out of their own parishes to such disordered and unlawful exercises and pastimes, neglecting divine service both in their own parishes and elsewhere; (2) Be it enacted by the king's most excellent majesty, the lords spiritual and temporal, and the commons in this present parliament assembled, and by the authority of the same, That from and after forty days next after the end of this session of parliament, there shall be no meetings, assemblies, or concourse of people out of their own parishes on the Lord's day, within this realm of *England*, or any the dominions thereof, for any sports or pastimes whatsoever; (3) nor any bear-baiting, bull-baiting, interludes, common plays, or other unlawful exercises and pastimes, used by any person or persons within their own parishes; (4) and that every person or persons offending in any the premises, shall forfeit for every offence three shillings and four pence, the same to be employed and converted to the use of the poor of the parish where such offence shall be committed; (5) and that any one justice of the peace of the county, or the chief officer or officers of any city, borough, or town corporate where such offence shall be committed, upon his or their view, or confession of the party, or proof of any one or more witnesses by oath, which the said justice or chief officer or officers shall by virtue of this act have authority to minister, shall find any person offending in the premises, the said justice or chief officer or officers shall give warrant under his or their hand and seal, to the constables and churchwardens of the parish or parishes where such offence shall be committed, to levy the said penalty so to be assessed, by way of distress and sale of the goods of every such offender, rendering

There shall be no assemblies for unlawful pastimes on the Lord's day.

Unlawful meetings and pastimes on the Lord's day forbidden

Every person using any unlawful pastimes on the Lord's day, shall forfeit 3s. 4d. to the poor of the parish.

After conviction by warrant from a justice, &c. the constables,

&c. may levy rendring to the said offenders the overplus of the money raised of the said the penalty, goods so to be sold; and in default of such distress, that the party offending be set publickly in the stocks by the space of three hours; (6) and that if any man be sued or impeached for execution of this law, he shall and

General issue. may plead the general issue, and give the said matter of justification in evidence: (7) Provided, that no man be impeached by this act, except he be called in question within one month next after the said offence committed:

The ecclesiastical jurisdiction not abridged. (8) Provided also, that the ecclesiastical jurisdiction within this realm, or any the dominions thereof, by virtue of this act, or any thing therein contained, shall not be abridged, but that the ecclesiastical court may punish the said offences, as if this act had not been made. (9) This act to continue until the end of the first session of the next parliament, and no longer. 3 Car. 1. c. 4. Continued until the end of the first session of the next parliament, and farther continued by 16 Car. 1. c. 4. and enforced by 29 Car. 2. c. 7.

STAT. 3 Car. 1. c. 1. See this act under title **Butchers.**

STAT. 29 Car. 2. c. 7. [A. D. 1676, intituled] "An act for the better observation of the Lord's day, commonly called *Sunday*."

"For the better observation and keeping holy the Lord's day, commonly called *Sunday*; (2) Be it enacted by the king's most excellent majesty, by and with the advice and consent of the lord's spiritual and temporal, and of the commons in this present parliament assembled, and by the authority of the same, That all the laws enacted and in force concerning the observation of the Lord's day, and repairing to the church thereon, be carefully put in execution: (3) And that all and every person and persons whatsoever, shall on every Lord's day apply themselves to the observation of the same, by exercising themselves thereon in the duties of piety and true religion, publickly and privately; (4) and that no tradesman, artificer, workman, labourer, or other person whatsoever, shall do or exercise any worldly labour, business or work of their ordinary callings on the Lord's day, or any part thereof (works of necessity and charity only excepted) (5) and that every person being of the age of fourteen years or upwards, offending in the premises, shall for every such offence forfeit the sum of five shillings; (6) and that no person or persons whatsoever, shall publickly cry, shew forth, or expose to sale, any wares, merchandizes, fruit, herbs, goods or chattels whatsoever, upon the Lord's day, or any part thereof, upon pain that every person so offending, shall forfeit the same goods so cried, or shewed forth, or exposed to sale.

Tradesmen,
artificers and
labourers.

None shall
cry or expose
to sale wares.

Drovers,
horse-courfers
waggoners,
butchers, and
higlers, boats
and barges.

Sett. 2. And it is further enacted, That no drover, horse-courser, waggoner, butcher, higler, their or any of their servants, shall travel, or come into his or their inn or lodging upon the Lord's day, or any part thereof, upon pain that each and every such offender shall forfeit twenty shillings for every such offence; (2) and that no person or persons shall use, imploy or travel upon the Lord's day, with any boat, wherry, lighter or barge, except it be upon extraordinary occasion, to be allowed by some justice of the

the peace of the county, or head-officer, or some justice of the peace of the city, borough or town corporate where the fact shall be committed; (3) upon pain that every person so offending, shall forfeit and lose the sum of five shillings for every such offence. (4) And that if any person offending in any of the premises, shall be thereof convicted before any justice of the peace of the county, or the chief officer or officers, or any justice of the peace of or within any city, borough or town corporate where the said offence shall be committed, upon his or their view, or confession of the party, or proof of any one or more witnesses by oath (which the said justices, chief officer or officers is by this act authorized to administer) the said justice, or chief officer or officers shall give warrant under his or their hand and seal, to the constables or churchwardens of the parish or parishes where such offence shall be committed, to seize the said goods cried, shewed forth or put to sale, as aforesaid, and to sell the same, and to levy the said other forfeitures or penalties, by way of distress and sale of the goods of every such offender distrained, rendring to the said offenders the overplus of the monies raised thereby; (5) and in default of such distress, or in case of insufficiency, or inability of the said offender to pay the said forfeitures or penalties, that then the party offending be set publickly in the stocks by the space of two hours. (6) And all and singular the forfeitures or penalties aforesaid, shall be employed and converted to the use of the poor of the parish where the said offences shall be committed, saving only that it shall and may be lawful to and for any such justice, mayor or head officer or officers, out of the said forfeitures or penalties to reward any person or persons that shall inform of any offence against this act, according to their discretions, so as such reward exceed not the third part of the forfeitures or penalties.

Sett. 3. Provided, That nothing in this act contained, shall extend to the prohibiting of dressing of meat in families, or dressing or selling of meat in inns, cooks shops, or victualling-houses, for such as otherwise cannot be provided, nor to the crying or selling of milk before nine of the clock in the morning, or after four of the clock in the afternoon.

Sett. 4. " Provided also, That no person or persons shall be impeached, prosecuted or molested for any offence before mentioned in this act, unless he or they be prosecuted for the same within ten days after the offence committed.

Sett. 5. " Provided, and be it further enacted by the authority aforesaid, That if any person or persons whatsoever, which shall travel upon the Lord's day, shall be then robbed, that no hundred or the inhabitants thereof, shall be charged with, or answerable for any robbery so committed, but the person or persons so robbed, shall be barred from bringing any action for the said robbery; any law to the contrary notwithstanding: (2) Nevertheless, the inhabitants of the counties and hundreds (after notice of any such robbery to them or some of them given, or after hue and cry for the same to be brought) shall make, or cause to be made, fresh suit and pursuit after the offenders, with horsemen and footmen, according to the statute made in the twenty-seventh year of the reign of queen

Provisions for coaches by 5 & 6 W. & M. c. 22. f. 18. & 9 Ann. c. 23 f. 20.

In what manner the conviction shall be.

The penalty, how to be levied.

In case of insufficiency, the offender shall be set in the stocks. The forfeitures, how to be disposed of.

A provision for private families, victualling-houses, &c.

The prosecution to be within ten days.

The hundred not responsible for robberies committed on the Lord's day.

But shall make fresh suit after the offenders.

betb, upon pain of forfeiting to the king's majesty, his heirs and successors, as much money as might have been recovered against the hundred by the party robbed, if this law had not been made.

Service of
process on the
Lord's day
shall be void.
Carthew. 504.

Sett. 6. " Provided also, That no person or persons, upon the Lord's day, shall serve or execute, or cause to be served or executed, any writ, process, warrant, order, judgment or decree (except in cases of treason, felony, or breach of the peace) but that the service of every such writ, process, warrant, order, judgment or decree, shall be void to all intents and purposes whatsoever : (2) And the person or persons so serving or executing the same, shall be as liable to the suit of the party grieved, and to answer damages to him for doing thereof, as if he or they had done the same without any writ, process, warrant, order, judgment or decree at all.

Lunaticks.

THERE are, says lord Coke, four kinds of men who may be said to be *non compos* : 1. An ideot, who is *non compos* from his nativity. 2. One made such by sickness. 3. Lunatick, *qui aliquando gaudet lucidis intervallis*, which is *non compos* only for the time that he wants understanding. 4. One that is drunk ; which last is so far from coming within the protection of the law, that his drunkenness is an aggravation of whatever he does amiss. *Co. Lit.* 247. 4 *Co.* 124. See 1 *Hale Hist. P. C.* 30 to 37.

1. An ideot is a fool or madman from his nativity, and one who never has any lucid intervals ; therefore the king has the protection of him and his estate, during his life, without rendering any account ; because it cannot be presumed that he will be ever capable of taking care of himself or his affairs : And such a one is described a person that cannot number twenty, tell the days of the week, does not know his father or mother, his own age, &c. But these are mentioned as instances only ; for ideot, or not, being a question of fact, must be tried by jury or inspection. *Dyer* 25. *Moar* 4. *pl.* 11. *Brc. Ideots.* *F. N. B.* 233.

But though an ideot must be so *a nativitate*, yet if by inquisition it be found, that *A.* is an ideot not having any lucid intervals *per spatium octo annorum*, this is a sufficient finding ; for the inquisition having found the party an ideot, the adding *spatium octo annorum* is surplusage, and shall be rejected. 3 *Mod.* 43, 44. 2 *Show.* 171. *Skin.* 5. 177. *S. C.* *Prodgers* and *Lady Frazier*.

2. One made such by sickness, which my lord *Hale* calls *Dementia accidentalis vel ad entia*, and which he again distinguishes into a total and a partial insanity, from its being more or less violent, is such a madness as excuseth in criminal cases ; and though the party also in every thing else

be intitled to the same protection with an idiot; and though his disorder seems permanent and fixed, yet as he had once reason and understanding, and as the law sees no impossibility but what he may be restored to them again, it makes the king only a trustee for the benefit of such a one, without giving him any profit or interest in his estate. 1 Hale Hist. P. C. 30.

3. A lunatick; this is also *Dementia accidentalis vel adventitia*, and takes its name from the great influence which the moon has in all disorders of the brain; and though such a one hath intervals of reason, yet during his phrenzy he is intitled to the same indulgence as to his acts, and stands in the same degree with one whose disorder is fixed and permanent. 4 Co. 125. Co. Lit. 247. 1 Hale Hist. P. C. 31.

4. One made mad by drunkenness, which is called *Dementia effellata*; and though, as has been said, such a person be not intitled to the protection of the law, yet if a person by the unskilfulness of his physician, or by the contrivance of his enemies, eat or drink such a thing as causeth phrenzy, this puts him in the same condition with any other phrenzy, and equally excuseth him; also if by one or more such practices an habitual or fixed phrenzy be caused, though this madness was contracted by the vice and will of the party, yet this habitual and fixed phrenzy thereby caused puts the man in the same condition, as if the same was contracted involuntarily at first. Plow. 19. a. Crom. Justice 29. a. Co. Lit. 247. 1 Hale Hist. P. C. 32.

But though this subject of madness may be spun out to a greater length, and branched into several kinds and degrees, yet it appears that the prevailing distinction herein in law is between ideocy and lunacy; the first a *fatuity a nativitate, vel dementia naturalis*, which excuseth the party as to his acts, and intitles the king to the receipt of the rents and profits of his estate during his life, without being obliged to render any account for the same; the other accidental or adventitious madness, which, whether permanent and fixed, or with lucid intervals, goes under the general name of lunacy, and equally excuseth with ideocy, as to acts done during the phrenzy; but herein they differ, that in the latter case the king, as has been said, is only a trustee for the lunatick, and accountable to him, if he happens to be restored to his understanding, or to his representatives, if it happen otherwise. 3 Bac. Abr. 80. 4 Co. 125. a.

How Ideots and Lunaticks are to be found such.

Every person of the age and discretion is in law presumed to be of sound mind and memory, unless the contrary appear; and this rule holds as well in civil as criminal cases. 1 Hale Hist. P. C. 33.

The trial of ideocy, madness or lunacy in civil cases, and in order to the commitment or custody of the person and his estate, which belongs to the king, either to his own use and benefit, as in case of ideocy, or to the use of the party, in case of accidental madness or lunacy, is by writ or commission to the sheriff or escheator, or particular commissioners both by

their own inspection and by inquisition to inquire, and return their inquisition into the chancery; and thereupon a grant or commitment of the party and his estate ensues: And in case the party or his friends find themselves injured by the finding him a lunatick or ideot, a special writ may issue to bring the party before the chancellor, or before the king, to be inspected; and if, on examination, it appear the party is an ideot, the whole commission and office shall be discharged without any traverse or *monstrans de droit*. 9 Co. 31. a. 4 Co. 126. And for this writ of *Idiota inquirendo*, see *Fitz. N. B.* 232, 3.

Also the party found an ideot or lunatick may traverse the inquisition, as may any other person having a title to the land, and therefore it is said, that by the statute 18 Hen. 6. there ought to be a month's time between the return of the inquisition and the grant of the custody and lands, in order for the parties to come in and tender such traverse. *Skin.* 178.

If by inquisition a person be found a lunatick, and the custody granted to J. S. and the party thus found bring a *scire facias* to set aside the inquisition, the committee of the lunatick cannot plead nor join issue in such *scire facias*; for he can have no interest in the estate of the lunatick, being only in the nature of a bailiff to the king, and therefore his duty is to inform the king's attorney general of the nature of the affair, who is the proper person to contest the matter in behalf of the king. 2 Sid. 124. *Susan Thorn v. Coward*.

As to ideocy, lunacy or madness, which excuses in capital cases, it is not necessary that it was found by inquisition that the party was a madman, ideot, lunatick previous to the commitment of the fact; for if he was actually mad at the time of the fact committed, this shall excuse; and this regularly is to be tried by an inquest of office to be returned by the sheriff of the county wherein the court sits for the trial of the offence; and if it be found that he was actually mad, he shall be discharged without any other trial; but if they find that the party only feigns himself mad, and he refuses to answer or plead, he shall be dealt with as one who stands mute. 26 Aff. pl. 27. Bro. Cor. 101. 1 And. 107, 154. Sav. 50, 57. 1 Hawk. P. C. 2. 1 Hal. Hist. P. C. 35.

Also in case a man in a phrenzy happen by some oversight, or by means of the gaoler, to plead to his indictment, and is put upon his trial, and it appears to the court upon his trial that he is mad, the judge in discretion may discharge the jury of him, and remit him to gaol to be tried after the recovery of his understanding, especially in case any doubt appear upon the evidence touching the guilt of the fact, and this in *favorem vitæ*; and if there be no colour of evidence to find him guilty, or if there be a pregnant evidence to prove his insanity at the time of the fact committed, then, upon the same favour of life and liberty, it is fit it should be proceeded in the trial, in order to his acquittal and enlargement. 1 Hal. Hist. P. C. 33, 36.

So if a person during his insanity commits a capital offence, and recovers his understanding, and being indicted and arraigned for the same, pleads
Not

Not guilty, he ought to be acquitted; for, by reason of his incapacity, he cannot act *felleo animo*. 1 Hal. Hist. P. C. 36.

Who hath an Interest in, and Jurisdiction over Lunaticks.

It seems to be agreed at this day, that the king as *parens patrie* hath the protection of all his subjects, and that in a more peculiar manner he is to take care of all those who, by reason of their imbecillity and want of understanding, are incapable of taking care of themselves; this, in some books is called a prerogative in the crown, and in others a *regium munus*, or duty which the king owes to his subjects in return to their subjection and allegiance to him. Staund. Prærog. a. 9. fol. 33. 2 Inst. 14. 4 Co. 126. a. Dyer 25.

My lord Coke in his 2 Inst. is of opinion, that by the common law the king had no prerogative in the custody of an idiot's lands, but that the same belonged to the lords of whom the lands were holden, and that the same was given to the king by some act of parliament after the making of *Magna Charta*, and before the statute *De prærogativa Regis* 17 Ed. 1. cap. 9. In 4 Co. Beverley's case, he says, that this prerogative was by the common law, and that the statute *De prærogativa Regis* is only declarative thereof. 2 Inst. 14. 4 Co. 126.

STAT. 17 Ed. 2. ft. 1. *Prærogativa Regis* cap. 9. [A. D. 1324, intituled]
"His prerogative in the custody of lands of idiots.

"The king shall have the custody of the lands of natural fools, taking the profits of them without waste or destruction, and shall find their necessities, of whose fee forever the lands be holden. (2) And after the death of such idiots he shall render it to the right heirs, so that such idiots shall not aliene, nor their heirs shall be disinherited.

Bro. Idiot, 4;
5, 7.
2 H. 6. f. 3.
4 Co. 126.
8 Co. 170.
1 H. 7. f. 24.
Dyer, 302.
Regist. 266.

STAT. 17 Ed. 2. ft. 1. *Prærogativa Regis* cap. 10. [A. D. 1324, intituled]
"His prerogative in the preservation of the lands of lunaticks.

"Also the king shall provide, when any (that before time hath had his wit and memory) happen to fail of his wit, and there are many *per lucida intervalla*, that their lands and tenements shall be safely kept without waste and destruction, and that they and their household shall live and be maintained competently with the profits of the same, and the residue besides their sustentation shall be kept to their use, to be delivered unto them when they come to right mind; (2) so that such lands and tenements shall in no wise be aliened; (3) and the king shall take nothing to his own use. (4) And if the party die in such estate, then the residue shall be distributed for his soul by the advice of the ordinary.

Regist. 266.
32 H. 8. c. 46.

STAT. 15 Geo. 2. cap. 30. [A. D. 1742. intituled] "An act to prevent the marriage of lunaticks.

"Whereas persons who have the misfortune to become lunaticks, may, by reason of such their disorder, be liable to be surprized into unsuitable

Lunatick not to marry till declared of sane mind by the lord chancellor, &c.

unfuitable marriages, which may be of pernicious consequence, and a great misfortune to their families: wherefore, for preventing the same, and the ill consequence thereof, be it enacted by the king's most excellent majesty, by and with the advice and consent of the lord's spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That from and after the twenty-fourth day of *June*, in the year of our Lord one thousand seven hundred and forty-two, in case any person who now is, or at any time hereafter shall be found a lunatick, by any inquisition taken or to be taken by virtue of a commission under the great seal of *Great Britain*, or any lunatick or person under a phrenzy, whose person and estate by virtue of any act of parliament, now are, or hereafter shall be committed to the care and custody of particular trustees, shall marry before he or she shall be declared of sane mind by the lord high chancellor of *Great Britain*, the lord keeper, or lords commissioners of the the great seal of *Great Britain* for the time being, or such trustees as aforesaid, or the major part of them respectively, every such marriage shall be, and is hereby declared to be null and void to all intents and purposes whatsoever.

STAT. 17 *Geo. 2. c. 5.* [*A. D. 1744, intituled*] "An act to amend and make more effectual the laws relating to rogues, vagabonds, and other idle and disorderly persons, and to houses of correction."

Lunaticks to be confined by warrant of justices.

SECT. 20. "And whereas there are sometimes persons, who by lunacy, or otherwise, are furiously mad, or are so far disordered in their senses that they may be dangerous to be permitted to go abroad; be it therefore enacted by the authority aforesaid, That it shall and may be lawful for any two or more justices of the peace, where such lunatick or mad person shall be found, by warrant under their hands and seals, directed to the constables, churchwardens and overseers of the poor of the parish, town or place, or some of them, to cause such person so to be apprehended, and kept safely locked up in some secure place, within the county or precinct, where such parish, town or place shall lie, as such justices shall under their hands and seals direct and appoint; and (if such justices find it necessary) to be there chained, if the last legal settlement of such person shall be in any parish, town or place within such county or precinct; and if such settlement shall not be there, then such person shall be sent to the place of his or her last legal settlement by a pass, *mutatis mutandis*, as aforesaid, and shall be locked up or chained, by warrant of two justices of the county or precinct to which such person is so sent, in manner aforesaid; and the reasonable charges of removing, and of keeping, maintaining and curing such person during such restraint (which shall be for and during such time only as such lunacy or madness shall continue) shall be satisfied and paid (such charges being first proved upon oath) by order of two or more justices of the peace, directing the churchwardens or overseers where any goods, chattels, lands or tenements of such person shall be, to seize and sell so much of the goods and chattels,

Goods and estates of lunaticks to be seized, to pay the charge of their maintenance.

or

or receive so much of the annual rents of the lands and tenements, as is necessary to pay the same; and to account for what is so seized, sold or received, to the next quarter-sessions; but if such person hath not an estate to pay and satisfy the same, over and above what shall be sufficient to maintain his or her family, then such charges shall be satisfied and paid by the parish, town or place to which such person belongs, by order of two justices, directed to the churchwardens or overseers for that purpose. Otherwise at the charge of the parish.

Seet. 21. " Provided always, That this act, or any thing therein contained, shall not extend, or be construed to extend, to restrain or abridge the prerogative of the king, or the power or authority of the lord chancellor, lord keeper or commissioners of the great seal of *Great Britain* for the time being, or the chancellor, or vice chancellor of the county palatine of *Lancaster* for the time being, or of the chamberlain or vice chamberlain of the county palatine of *Chester* for the time being, touching or concerning such lunaticks or to restrain, or prevent any friend or relation of such lunaticks from taking them under their own care and protection; any thing in this act contained to the contrary notwithstanding. Provided.

Seet. 26. " And be it further enacted by the authority aforesaid, That any persons aggrieved by any act of any justice or justices of the peace out of sessions, in or concerning the execution of this act, may appeal to the next general or quarter sessions of the county, riding, liberty or division, giving reasonable notice thereof, whose order thereupon shall be final. Persons aggrieved may appeal to the next general or quarter sessions.

STAT. 29 Geo. 2. c. 31. [A. D. 1756, intituled] " An act to enable infants, lunaticks, and femes covert, to surrender leases in order to renew the same."

" Whereas divers lands, tenements and hereditaments, have been, and may be, granted by lease for the life of one or more person or persons, or for terms of years absolute, or determinable upon the death of one or more person or persons, or otherwise: and whereas in order to obtain a renewal of such leases, it is in many cases necessary to surrender up the estates thereby granted; which surrenders cannot be effectually made by persons under the age of twenty-one years, nor lunaticks, nor by femes covert without levying a fine, to the manifest detriment of them, and their families: Be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That in all cases where any person under the age of twenty-one years, or any lunatick, or feme covert, is or shall become interested in or intitled to, any lease or leases made or granted, or to be made or granted, by any person or persons, bodies politic, corporate or collegiate, aggregate or sole, for the life or lives of one or more person or persons, or for any term of years, either absolute, or determinable upon the death of one or more person or persons, or otherwise, it shall and may be lawful for such person under the age of twenty- Guardians, &c. of minors, lunatick, and femes covert, in order to the renewal of leases.

may apply to the court of Chancery, &c. in a summary way;

and by order of court, may surrender by deed such leases, and renew the same, as the court shall direct.

Fine and charges attending the renewal, to be charged on the estate, or the leasehold premises, as the court shall direct.

Fine for females covert to be charged on the leasehold premises.

New leases to be to the same uses as the former.

Surrender and renewal of such leases deemed valid.

twenty-one years, or for his or her guardian or guardians, or other person or persons, on his or her behalf, and for such lunatick, or his or her guardian or guardians, committee or committees of the estate, or other person or persons on his or her behalf, and for such feme covert, or any other person or persons on her behalf, to apply to the high court of Chancery of *Great Britain*, the court of Exchequer, the courts of equity of the counties palatine of *Chester*, *Lancaster*, and *Durham*, or the courts of great session of the principality of *Wales* respectively, by petition or motion, in a summary way, and by the order and direction of the said courts respectively made, upon hearing all parties concerned, such person under the age of twenty-one years, and such lunatick, or person or persons appointed by the said courts respectively, and also such feme covert, by deed or deeds only, without levying any fine, shall and may be enabled, from time to time, to surrender such lease or leases, and accept and take, in the name, and for the benefit of such person under the age of twenty-one years, or lunatick, or feme covert, one or more new lease or leases of the premises, comprised in such lease or leases surrendered by virtue of this act, for and during such number of lives, or for such term or terms of years, determinable upon such number of lives, or for such term or terms of years absolute, as was or were mentioned or contained in such lease or leases so surrendered, at the making thereof respectively, or otherwise as the said courts shall respectively direct.

Señ. 2. "And be it further enacted by the authority aforesaid, That all and every sum and sums of money, and other consideration, paid or advanced by any such guardian, trustee, committee, or other person, as and for a fine or income, or in the nature of a fine or income, for or on account of the renewal of any such lease or leases, and all reasonable charges incident thereto, shall be paid out of the estate or effects of the infant or lunatick for whose benefit the said lease or leases shall be renewed, or shall be a charge and incumbrance upon the leasehold premises, together with interest for the same, as the said courts respectively shall direct and determine; and as for and concerning leases to be made upon surrenders by females covert, unless the fine or consideration of such lease, and the reasonable charges, shall be otherwise paid or secured, the same, together with interest, shall be a charge or incumbrance upon such leasehold premises, for the use and benefit of such person or persons who shall advance the same.

Señ. 3. "And be it further enacted by the authority aforesaid, That the respective leases to be so renewed shall operate, and be to the same uses, and be liable to the same trusts, charges, incumbrances, dispositions, devises and conditions, as the leases to be, from time to time, surrendered as aforesaid, were or would have been subject to, in case such surrender had not been made; any thing in this or any former law to the contrary notwithstanding.

Señ. 4. "And be it further enacted and declared, That every such surrender, and such lease or leases granted thereupon, shall be, and be deemed as valid and legal, to all intents and purposes, as if such surrender

der had been made by and on the behalf of a person of full age, sane mind, or not married; any thing in this or any former law to the contrary notwithstanding."

Madder.

STAT. 31 Geo. 2. c. 35. [A. D. 1758, made, among other purposes] "for preventing the stealing or destroying of madder roots."

SECT. 5. "And whereas the growth and cultivation of madder is of great consequence to the trade and manufactures of this kingdom: therefore, for preventing the stealing or destroying of madder roots; be it enacted by the authority aforesaid, That if any person or persons shall steal and take away, or wilfully and maliciously pull up, or destroy, any madder roots growing or being in any lands or grounds belonging to any person or persons, and shall be thereof convicted before any justice or justices of the peace of the county, town, or place, where the offence shall be committed, either by confession of the party offending, or by the oath of any credible witness or witnesses (which oath such justice or justices is and are hereby authorized and empowered to administer) every person so offending, and being convicted of such offence in manner herein before mentioned, shall, for the first offence, give and pay to the owner or owners of the madder roots so stolen, pulled up, or destroyed, such satisfaction for his or their damage thereby sustained, and within such time, as the said justice or justices shall appoint; and shall over and above pay down upon such conviction unto the overseers of the poor of the parish where the offence or offences was or were committed, for the use of the said poor, such sum of money, not exceeding ten shillings, as to the said justice or justices shall seem meet; and if any such offender or offenders shall not make such recompence or satisfaction to the said owner or owners, and also pay such sum to the use of the poor, in manner and form aforesaid; then the said justice or justices shall and may commit such offender or offenders to the house of correction, for any space not exceeding one month; or shall and may order such offender or offenders to be whipped by the constable, or other officer, as to the said justice or justices shall seem meet; and if any such person or persons shall again commit the like offence, and be thereof convicted, as aforesaid, then, he, she, or they, so offending the second time, and being thereof convicted, as aforesaid, shall be committed to the house of correction for three months.

Persons convicted of stealing or destroying madder roots,

are, for the first offence, to make satisfaction for the damage;

and pay to the overseers of the poor of the parish, a fine not exceeding 10s.

or be committed to the house of correction for one month; and on conviction of a like offence, the second

time, are to be committed for three months.

Prosecutions
be within 30
days after the
offence.

Stat. 6. "Provided always, That no person or persons shall be prosecuted for any such offence of stealing, pulling up, or destroying of madder roots, unless such prosecution be begun within thirty days after the offence committed."

Maim.

MAIM, or MAIHEM, or MAYHEM, signifies a corporal wound or hurt, by which a man loseth the use of any member, that is or might be any defence unto him in battle: as if a bone be taken out of the head, or broken in any other part of the body or foot, or hand or finger, or joint of a foot, or any member be cut, or by wound the sinews be made to shrink; or if an eye be put out, fore-teeth broke, or any other thing hurt in any man's body, whereby he is disabled to defend himself, or offend his enemy. *Glanvill, lib. 14. cap. 7. See Bracton at large, lib. 3. tract. 2. cap. 24. num. 3. Britton, cap. 25. and Staundf. pl. cor. lib. 1. cap. 51. and the Mirror of Justice, cap. De Homicide.* But the cutting off an ear or nose, the breaking of the hinder teeth, or such like, was no *mayhem*, it being rather a deformity of body, than diminishing of strength. But now by the statute of 22 & 23 *Car. 2. c. 1*, the cutting off a nose, or cutting off or disabling any limb or member, is made felony without benefit of clergy: *mayhem* is commonly tried by the *justices* inspecting the party: and if they doubt whether it be a *mayhem*, or not, they use to take the opinion of some able chirurgeon in the point. The *Grand Customary of Normandy, cap. 6.* calls it *makaigium*, and the *Canonists, Membri mutilationem*; but all agree, that it is the loss of a member, or the use thereof; and *Membrum, Cassan. de Cons. Burg. pag. 168.* defines thus, *Est pars corporis habens destinatam operationem in corpore.* See *Skene De verborum Significatione, verbo Machanium.* See *Co. on Litt. lib. 11. cap. 11. sect. 194. Homo Maimiatus*, a man maimed or wounded. By the old *English* law there lay an appeal for *maim* or wilful wounding: when it was laid to the charge of the defendant or appellee, that he did it *nequiter in felonia, i. e.* maliciously, and with an evil or felonious intent: and the appellant did offer *Disfratatione versus eum, sicut homo maimemiat, prout curia Domini Regis consideravit.* Vid. *Bracton, lib. 3. cap. 24. n. 1, 2. Cowell. edit. 1727.*

Maim is by others defined to be an hurt done to a man's body, whereby he is rendered less able in fighting, either to defend himself, or annoy his adversary; such as the cutting off, disabling, or weakening a hand or finger, striking out an eye or fore-tooth, or castration, &c. and these are properly said to be *maimings*, and to come under the notion of felonies; but the cutting off an ear or nose are said not to be properly

maihems, because they do not weaken a man, but only disfigure him. *Co. Lit.* 126, 128. 3 *Inst.* 62, 118. 1 *Hawk. P. C.* 111.

By the old common law, castration was punished with death, and other maihems with the loss of member for member; but of latter days maihem was punishable only by fine and imprisonment. *Brañ.* 144. 3 *Inst.* 62.

STAT. 22 & 23 *Car.* 2. c. 1. [A. D. 1670, intituled] "An act to prevent malicious maiming and wounding."

"Whereas upon the one and twentieth day of *December*, in the year of our Lord one thousand six hundred and seventy, a violent and inhuman attempt was made upon the person of Sir *John Coventry*, knight of the honourable order of the *Bath*, being a member of the commons house of parliament, and then attending the parliament, and upon the person of his servant *William Wylkes*, by a considerable number of armed men, both on foot and horseback, whereby the said Sir *John Coventry* and his servant then lost several goods, and the said Sir *John Coventry* received divers wounds, some of which were given him in such barbarous manner, that some of the offenders held him whilst others wounded him.

Sec. 2. "And whereas by several bills of indictment found by the grand jury for the city and liberty of *Westminster*, where the said facts were committed, Sir *Thomas Sandys*, knt. *Charles Obrian*, esq. *Simon Parry* and *Miles Reeves*, amongst others, stand indicted of felony and robbery for the same, but have fled from justice, not daring to abide a legal trial: (2) Be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and of the commons assembled in parliament, and by the authority of the same, That if the said Sir *Thomas Sandys*, *Charles Obrian*, *Simon Parry*, Sir *Thomas Sandys*, &c. and *Miles Reeves*, shall not render themselves to the lord chief justice of his majesty's court of King's Bench, or to some other of the justices of the said court, on or before the tenth day of *March*, in the year of our Lord one thousand six hundred and seventy, in order to their trials for the facts aforesaid; that then such of them the said Sir *Thomas Sandys*, *Charles Obrian*, *Simon Parry*, and *Miles Reeves*, as shall not so render himself, as aforesaid, shall and do suffer perpetual exile, and be for ever banished this realm, and all other his majesty's dominions. not rendering themselves, shall be perpetually banished.

Sec. 3. "And be it enacted, That the gaol-delivery for the county of *Middlesex* and the city of *London*, which is intended to be holden the two and twentieth day of *February*, one thousand six hundred and seventy, shall be adjourned till the said tenth day of *March*, and the justices of the said gaol-delivery, or any two of them, are hereby authorized and required to adjourn the same accordingly; and that no trials shall be there proceeded upon before the tenth day of *March* aforesaid. Adjournment of the gaol-delivery for *Middlesex*.

Sec. 4. "And if the said Sir *Thomas Sandys*, *Charles Obrian*, *Simon Parry*, and *Miles Reeves*, or any of them, shall not render themselves, as aforesaid, and shall at any time return into, or be found in *England*, or any other his majesty's dominions, after the said tenth day of *March*; then judged felons. Sir *Thomas Sandys*, &c. not rendering themselves shall be adjudged felons.

then such of them the said Sir *Thomas Sandys*, *Charles Obrian*, *Simon Parry*, and *Miles Reeves*, as shall not render himself, and yet return or be found, as aforesaid, shall from the said one and twentieth day of *December*, in the year of our Lord one thousand six hundred and seventy, be deemed and adjudged to be guilty of the said felonies and robberies, and shall by virtue of this act be adjudged to be convicted and attainted of felony and robbery, without any benefit of clergy, to all intents and purposes, as if they had been thereof convicted and attainted by due trial and judgment of law, and shall suffer such pains, punishments and forfeitures, as by law are to be inflicted upon felons attaint, not having benefit of clergy.

No pardon
but by act of
parliament.

Señ. 5. “ And be it further enacted by the authority aforesaid, That neither the said Sir *Thomas Sandys*, *Charles Obrian*, *Simon Parry*, and *Miles Reeves*, nor any who upon the attempt aforesaid, actually took away any goods from the person of Sir *John Coventry*, or his said servant, or actually gave any blow or wound to the said Sir *John Coventry*, or his said servant, or held or kept down the said Sir *John Coventry*, or his said servant, while they the said Sir *John Coventry*, and his said servant, or either of them were robbed, beaten or wounded, nor any who commanded the party, either of horsemen or footmen, in executing the aforesaid villainous and barbarous attempt, shall be pardoned any of the offences in this act mentioned; but are made incapable of any pardon for the same from the king's majesty, his heirs and successors, unless by act of parliament, wherein such person or persons shall be particularly named.

A pardon
granted to any
one that was
guilty of the
fact, and will
make a disco-
very of any
others besides
those men-
tioned in the
act.

Señ. 6. “ And be it further enacted by the authority aforesaid, That if any the said offenders, other than the said Sir *Thomas Sandys*, *Charles Obrian*, *Simon Parry*, and *Miles Reeves*, and such as did actually rob, strike or wound the said Sir *John Coventry*, or his said servant, or held or kept them, or any of them down, till they, or either of them were robbed, beaten, or wounded, as aforesaid, and other than such as commanded any party in the said attempt, shall before the eighth day of *March*, in the year of our Lord one thousand six hundred and seventy, voluntarily render him or themselves to the lord chief justice of the said court of King's Bench, or to some other of the justices of the said court, and acknowledge his said offences, and declare his whole knowledge of the facts aforesaid, and of the persons acting therein, and shall discover to the lord chief justice, or other justice, as aforesaid, some of the persons who wounded or held, robbed or struck, as aforesaid, Sir *John Coventry*, or his servant, or commanded, as aforesaid, and shall give such security as the said chief justice, or other the said justice, before whom such render shall be made, as aforesaid, shall think reasonable to give evidence, if lawfully required, against the offenders by this act made incapable of pardon; so that the said lord chief justice, or such other justice of the said court to whom such render shall be made, as aforesaid, shall be satisfied, that he or they so rendering him or themselves, have declared the truth according to the best of their knowledge, and obtain a certificate from the said respective chief justice or justice before whom such render was made to that effect, under the hand and seal of the said chief justice or justice;

justice; he and they so rendring him or themselves, and declaring, as aforesaid, shall by the authority aforesaid be pardoned the said assaults, felonies and robberies, and immediately from and after the obtaining such certificate, as aforesaid, he and they so rendring him and themselves, and declaring, as aforesaid, shall be deemed, adjudged and taken to be hereby to all intents and purposes, pardoned, acquitted and discharged from the said crimes and felonies, and from all further prosecutions and imprisonments, indictments, convictions, attainders, pains, penalties or forfeitures that may accrue for the same.

Sett. 7. "And for the prevention of the like mischiefs for the time to come, Be it further enacted by the authority aforesaid, That if any person or persons, from and after the four and twentieth day of *June*, which shall be in the year of our Lord God one thousand six hundred seventy and one, on purpose and of malice fore-thought, and by lying in wait shall unlawfully cut out or disable the tongue, put out an eye, slit the nose, cut off a nose or lip, or cut off or disable any limb or member of any subject of his majesty, with intention in so doing to maim or disfigure in any the manners before-mentioned such his majesty's subject; that then and in every such case the person or persons so offending, their counsellors, aiders and abettors, (knowing of, and privy to the offence, as aforesaid) shall be, and are hereby declared to be felons, and shall suffer death, as in cases of felony, without benefit of clergy.

Sett. 8. "Provided, That no attainder of such felony shall extend to corrupt the blood, or forfeit the dower of the wife, or the land, goods or chattels of the offender.

Sett. 9. "Provided always, and it is hereby declared and enacted, That his majesty's royal assent to this bill shall not determine this session of parliament.

If a man attack another of malice fore-thought, in order to murder him with a bill, or any other such-like instrument, which cannot but endanger the maiming him, and in such attack happen not to kill, but only to maim him, he may be indicted on this statute, together with all those who were his abettors, &c. and it shall be left to the jury on the evidence, whether there was a design to murder by maiming, and consequently a malicious intent to maim, as well as to kill; in which case the offence is within the statute, tho' the primary intention was murder. *State Tr. vol. 6. fo. 211.* So ruled in *Cooke's* trial, who together with *Woodburne* was condemned and executed at *Suffolk*, 8 *Geo. 1.* for slitting the nose of *Mr. Crispe*.

Maintenance.

MAINTENANCE, (*Manutentio*, and *manutenentia*,) signifies the upholding of a cause or person, either by word, writing, countenance or deed; metaphorically drawn from succouring a young child, that learns to go by one's hand: in law it is taken in the worst sense, as appears by 32 H. 8. c. 9. And when a man's act in this kind is by law accounted *maintenance*, and when not, see *Brooke*, tit. *Maintenance*, and *Kitchin*, fol. 202. and *F. N. B.* fol. 72. and *Crompt. Jurisdic.* fol. 38. The writ that lies against a man for this offence, is called *Maintenance*. See *Co. on Litt.* fol. 366. *Special maintenance*, *Kitchin*, fol. 204. seemeth to be *maintenance*, most properly so termed. *Cowell*, edit. 1727.

Maintenance in general, is defined by others an unlawful taking in hand, or upholding of quarrels, or sides, to the disturbance or hinderance of common right, and is said to be twofold. *Co. Lit.* 368. b. 2 *Inst.* 208, 212. 1 *Hawk. P. C.* 249. First, *Ruralis*, or in the country; as where one assists another in his pretensions to certain lands, by taking or holding the possession of them for him by force or subtilty; or where one stirs up quarrels and suits in the country, in relation to matters wherein he is no way concerned; and this kind of maintenance is punishable at the king's suit by fine and imprisonment, whether the matter in dispute any way depended in plea or not; but it is said not to be actionable. *Co. Lit.* 368. 2 *Inst.* 213. 2 *Roll. Abr.* 115. Secondly, *Curialis*, or in a court of justice, where one officiously intermeddles in a suit depending in any such court, which no way belongs to him, by assisting either party with money, or otherwise, in the prosecution or defence of any such suit. 2 *Inst.* 212. 2 *Roll. Abr.* 115. Of this second kind of maintenance there are said to be three species, 1st, Where one maintains one side to have part of the thing in suit, which is called *champerty*. 2dly, Where one laboureth a jury, which is called *embracery*. 3dly, Where one maintains another without any contract to have part of the thing in suit, which generally goes under the common name of maintenance.

What shall be deemed Acts of Maintenance; and in what Respects some such Acts may be justified.

It is said, that only he, who assists another with money in his cause, as by retaining counsel for him, or otherwise bearing him out in the whole, or part of the expence, but also he who, by his friendship or interest, saves him that expence, which otherwise he may be put to, is guilty of maintenance; as where one persuades, or but endeavours to persuade a
man

man to be of counsel for another *gratis*. *Bro. Maint.* 7, 14. *2 Roll. Abr.* 118. *1 Hawk. P. C.* 249.

Also it seems to be an act of maintenance to open evidence to the jury, or to give evidence officiously without being called upon to do it, or to speak in a cause as one of counsel with the party, or to retain an attorney for him; and some have said, that it is maintenance, even barely to go along with him to enquire for a person learned in the law. *Heil.* 78, 79. *Cro. Eliz.* 735: *1 Roll. Abr.* 593. *2 Roll. Abr.* 118.

It seems to be maintenance for a man of great power and interest to say publicly, that he will spend 20*l.* on one side, or that he will give 20*l.* to labour the jury; and it hath been said to be maintenance for such a person to come to the bar with one of the parties, and stand by him while his cause is tried, without saying any thing: but a promise to maintain another is not maintenance, unless it be in respect of the publick manner in which it is made, or the power by whom it is made. *1 Hawk. P. C.* 250. and several authorities there cited.

It is said to be maintenance for a juror to solicit a judge to give judgment according to the verdict; but it seems to be no maintenance for a juror to exhort his companions to join with him in such a verdict as he thinks right. *1 Hawk. P. C.* 250.

It seems to be no maintenance for a man to give another friendly advice what action is proper for him to bring for such a debt; or what method is safest to free him from such an arrest; or what counsellor or attorney is likely to do his business most effectually; for it would be extremely hard to make such neighbourly acts of kindness, which seem rather commendable than blame-worthy; to come under the notion of maintenance; which always seems to comply a contentious and over-busy intermeddling with other mens matters, in which respect it is so highly criminal; yet it is said, that a man of great power, not learned in the law, may be guilty of maintenance, by telling another, who asks his advice, that he has a good title. *1 Hawk. P. C.* 250.

It is no maintenance to give a man money, who has no suit then depending, unless it plainly appear that it was given with a design to assist him in a suit intended, which suit is afterwards actually brought. *1 Hawk. P. C.* 250.

It is as much an act of maintenance to support a man after judgment given, as to do it hanging the plea. *1 Hawk. P. C.* 250.

It seems clear, that not only those who have an actual interest in the thing in variance, as those who have a reversion expectant on an estate-tail, or on a lease for life or years, &c. but also those who have a bare contingency of an interest in the lands in question, which possibly may never come *in esse*, and even those who, by the act of God, have the immediate possibility of such an interest, as heirs apparent, or the husband of such heirs, tho' it be in the power of others to bar them, may lawfully maintain another in an action of trespass, concerning such lands; and if a plaintiff, in an action of trespass, alien the lands, the alienee may produce evidence to prove that the inheritance, at the time of the action, was in
the

the plaintiff, because the title is now become his own: 2 *Roll. Abr.* 115, 117. 2 *Inst.* 564. *Bro. Maint.* 28, 53.

Also he who is bound to warrant lands may lawfully maintain the tenant in the defence of his title, because he is bound to tender other lands to the value of those who shall be evicted. *Bro. Maint.* 51.

Also he who has an equitable interest in lands or goods, or even in a chose in action, as a *cestui que trust*, or a vendee of lands, &c. or an assignee of a bond for a good consideration, may lawfully maintain a suit concerning the thing in which he hath such an equity; and from the same ground it seems plainly to follow, that the grantee of a reversion for good consideration might, without any attornment, maintain the tenant of the land, before the statute of 4 & 5 *Ann.* which makes such attornment needless. *Noy* 99, 100. *Moor* 620. *Cro. Eliz.* 552. 1 *Sid.* 217.

Wherever any persons claim a common interest in the same thing, as in a way, church-yard or common, &c. by the same title, they may maintain one another in a suit concerning such thing; and a man's bail may take care to have his appearance recorded; but, as some say, they cannot safely intermeddle farther. 1 *Hawk. P. C.* 252.

Whoever of kin or godfather to either of the parties, or related by any kind of affinity still continuing, may lawfully stand at the bar and counsel him, and pray another to be of counsel for him; but cannot lawfully lay out his money in the cause, unless he be either father or son, or heir apparent to the party, or husband of such an heiress. 2 *Inst.* 564. 1 *Hawk. P. C.* 252.

Not only the actual lord, but also the *cestui que use* of a seignory, may come with the tenant to a trial in an assise against him, and stand by him, and assist him, and also pray the sheriff to return an indifferent jury; and it seems a plausible opinion, that he may also justify laying out his money in defence of his tenant's title: also the lord of a town may maintain the inhabitants in an action, wherein the right to their common burying-place is questioned, by shewing authentick evidence of it to the jury. *Co. Lit.* 101, 384. 2 *Roll. Abr.* 116, 117.

A tenant may lawfully come with his lord, and stand with him at a trial. 1 *Hawk. P. C.* 253.

A master may go along with his servant, or with his domestick chaplain, to retain counsel; also he may pray one to be of counsel for him, and may go with him, and stand with him, and aid him at the trial, but ought not to speak in court in favour of his cause; also if the servant be arrested, the master may assist him with money to keep him from prison, that he may have the benefit of his service; but the master cannot safely lay out money for the servant in a real action, unless he have some of his wages in his hands; but those, with the servant's consent, he may safely disburse. *Bro. Maint.* 44, 52. *Hetley* 79. *Moor* 814.

A person retained generally as a servant, and not for a particular occasion only, may lawfully ride about to speed his master's business, and may go to counsel for him, and shew his evidence to the counsel, or to the jury,

jury, and stand by him at a trial, but cannot lawfully lay out his own money in the suit. 1 *Hawk. P. C.* 253.

Any one may lawfully give money to a poor man to enable him to carry on his suit; also any one may lawfully go with a foreigner who cannot speak *English* to a counsellor, and inform him of his case. *Bro. Maint.* 14.

A counsellor having received his fee, may lawfully set forth his client's cause to the best advantage; but can no more justify giving him money to maintain his suit, or threaten a juror, than any other person. 2 *Inst.* 564. 2 *Roll. Abr.* 116.

Also an attorney specially retained may lawfully prosecute or defend an action in the court wherein he is an allowed attorney, and lay out his own money in the suit, and maintain an action against his client for the money so laid out by virtue of the retainer, without any special promise; also an attorney so retained may in like manner maintain his client in a court wherein he is an allowed attorney; but, as some say, cannot have an action for the money laid out in the suit, without a special promise; but an attorney who maintains another is no way justified by a general retainer, to prosecute for him in all causes; neither can an attorney lawfully carry on a cause for another at his own expence, with a promise never to expect a re-payment; and it is questionable, whether solicitors who are no attorneys, can in any case lawfully lay out their own money in another's cause: *Kelw.* 50. 2 *Inst.* 564. *Winch.* 52. 1 *Jon.* 208. *Cro. Car.* 159. 3 *Mod.* 98.

But counsellors and attorneys using deceitful practice in maintenance of their client's causes are punishable by the common law, as well as by the statute of *Westm.* 1. cap. 28. which enacts, "That if any serjeant, pleader or other, do any manner of deceit or collusion in the king's court, or consent unto it in deceit of the court, or to beguile the court or the party, and thereof be attainted, he shall be imprisoned for a year and a day, and from thenceforth shall not be heard to plead in that court for any man; and if he be no pleader, he shall be imprisoned in like manner by the space of a year and a day at the least; and if the trespass require greater punishment, it shall be at the king's plea. 2 *Inst.* 215.

It is an offence within this statute for an attorney to sue out an *habere facias seisinam*, falsely reciting a recovery where there was none, and by colour thereof to put the supposed tenant in the action out of his freehold. *Dyer* 249. pl. 84. 2 *Inst.* 215.

Also it is an offence within the statute to bring a *precipe* against a poor man, having nothing in the land, on purpose to oust the true tenant; or to procure an attorney to appear for a man, and confess a judgment without any warrant; or to plead a false plea, known to be utterly groundless, and invented merely to delay justice, and to abuse the court. 2 *Inst.* 215.

*How Maintenance is restrained and punished by the Common Law,
and by the Statute.*

By the common law, all unlawful maintainers are not only liable to render damages in an action at the suit of the party grieved, but may also be indicted and fined, and imprisoned, &c. and it seems that a court of record may commit a man for an act of maintenance in the face of the court. 2 *Rel Abr.* 114. 2 *Inst.* 208. *Heitley* 79.

By the 1 *Ed. 3. cap.* 14. and 20 *Ed. 3. cap.* 4. it is enacted, That none of the king's ministers, nor no great man of the realm by himself nor by other, by sending of letters or otherwise, nor none other great nor small, shall take upon them to maintain quarrels nor parts in the country to the disturbance of common right.

And by the 1 *Ric. 2. cap.* 7. it is enacted, " That no person whatsoever shall take or sustain any quarrel by maintenance in the country or elsewhere, on grievous pain; that is to say, the king's counsellors and great officers, on a pain that shall be ordained by the king himself by the advice of the lords of this realm; and other officers of the king, on pain to lose their offices, and to be imprisoned, and ransomed, &c. and all other persons, on pain of imprisonment and ransom, &c.

In the construction of these statutes the following points have been holden.

That *nul tiel record* is a good plea to an action on these statutes, by which it appears, that they extend not to the taking out an original, which is never returned, but they extend as well to maintenance in a court baron, as to maintenance in a court of record; neither is it material whether the plaintiff in the action, wherein there was such maintenance, were nonsuited or recovered; but it is said, that none of the statutes of maintenance extends to the spiritual court. 1 *Hawk. P. C.* 136-7.

He who fears that another will maintain his adversary, may, by way of prevention, have an original grounded on these statutes, prohibiting him to do it. 1 *Hawk. P. C.* 156.

By the 32 *Hen. 8. cap.* 9. No person shall unlawfully maintain or cause or procure any unlawful maintenance in any suit of the king's courts, where any person shall have authority by the king's commission, patent or writ to hold plea of lands, or to examine, hear or determine any title of lands, &c. and no person shall unlawfully maintain, for maintenance of any suit or plea, any person or persons, or embrace any freeholders or jurors, or suborn any witnesses by letters, rewards or promises, or any other sinister means, to maintain any matter or cause, or to the disturbance of justice, &c. on pain of 10*l.* one moiety to the king, the other to the informer.

In an information thereon it is not sufficient to say, that the defendant maintained the party, without adding that he did it unlawfully; neither is it sufficient to say, that a bill was exhibited, without further shewing that a plea was depending. 1 *Hawk. P. C.* 258.

Offence

Offence of buying or selling pretended Titles.

It seems an high offence at common law, as plainly tending to oppression, for a man to buy at an under rate a doubtful title known to be disputed, to the intent that the buyer may carry on the suit, which the seller doth not think it worth his while to do; and it seems not material whether the title be good or bad; or whether the seller were in possession or not, unless the possession were lawful and uncontested. *Moor* 751. *pl.* 1031. *Hob.* 115. *Plow.* 80.

Also by the 1 R. 2. *cap.* 9. reciting, that many persons having true title to lands, &c. were wrongfully delayed, by means that the defendants did make gifts and feoffments of their lands in debate, and of their goods to great men, against whom the said pursuants durst not make their pursuits; and also that many persons used to disseise others, and anon to make feoffments sometimes to great men to have maintenance, and sometimes to persons unknown, to the intent to delay the said disseisees, &c. and therefore it is enacted, "That no gift or feoffment of tenements or goods be made by such fraud or maintenance, and that if any be so made, they shall be holden for none; and that the said disseisees shall recover against the first disseisor their lands and damages, without having regard to such alienations, so that they commence their suit within a year after the disseisin."

It is further enacted by 32 *Hen.* 8. *c.* 9. "That no person shall bargain, buy or sell, or by any means obtain any pretended rights or titles, or take promise, grant or covenant to have any right or title to any hereditaments, unless the seller, &c. his ancestors, or they from whom he claims, have been in possession of the same, or of the reversion or remainder thereof, or take the rents or profits thereof for one whole year next before the said bargain and sale, &c. on pain that such seller shall forfeit the whole value of the hereditaments so sold, and the buyer or taker, knowing the same, shall forfeit the value of hereditaments so by him bought or taken; the one half of the said forfeitures to be to the king, the other to him who will sue, whether freehold or copyhold. 4 *Co.* 26. *a.* *Co. Lit.* 369. *b.* *Moor* 655. and therefore the plaintiff in this action must shew the value at the time of the bargain. *Cro. Car.* 233.

But it is provided, That it shall be lawful for any person, being in lawful possession, by taking of the yearly farm-rents, or profits of any hereditaments to buy or get, by any reasonable means, the pretended right or title of any other person to the same.

Provided, That no one shall be charged with these penalties, unless he be sued within one year after the offence.

In the construction of this statute the following opinions have been holden.

That the statute being publick, there is no need to recite it in an action brought upon it; but if you will take upon you to recite it, a material misrecital will be fatal. *Lit. Rep.* 359. *Plow.* 84. *Cro. Car.* 233. *Dyer* 74.

Maintenance.

In an action against the buyer of a pretended title, it must expressly appear, that the defendant knew that the seller had not been a year in possession; but in such an action by the buyer, the contrary must expressly appear; for otherwise it may be intended that he was *particeps criminis*. 1 Leon. 167. Lit. Rep. 369.

It is not sufficient to shew, that the seller had not been in possession a year before, &c. without averring, that he had a pretended right or title, for that is the point of the action. *Dyer* 74. *pl.* 19, 20. *Plow.* 80, 87. *Cro. Car.* 233.

A contract for a lease for years, unless fairly made to try a title in ejectment, is within the statute, whether it were made off from the land, or upon the land, by a person in or out of possession; and in an action on the statute for making such a lease, there is no need to shew its commencement or end, because the plaintiff is supposed to be a stranger to it. *Co. Lit.* 369. 1 Leon. 166. 1 And. 76.

No conveyance by one who has the uncontested possession and absolute undisputed property of lands, as by a disseisor having obtained a release from the disseisee who had the true right not contested by any other person whatsoever, or by a mortgagor having redeemed his lands, is within the meaning of the statute; because it no way favours of maintenance, and can be prejudicial to no one; neither is a lease for the usual rent, by one who recovers lands by virtue of an ancient title, within the meaning of the statute, though he had the absolute property and possession of the land; for the intent of the statute was to restrain all persons from transferring any disputed right to strangers. *Co. Lit.* 369.

Whoever has a reversion vested in him, may lawfully take any conveyance which will strengthen his estate; but cannot take a covenant from a stranger for a conveyance from him, when he shall have recovered the land. *Co. Lit.* 569.

Marriage.

Marriage.

STAT. 26 Geo. 2. c. 33. [*A. D. 1753, intituled*] “ An act for the better preventing of clandestine marriages.”

“ Whereas great mischiefs and inconveniencies have arisen from clandestine marriages; For preventing whereof for the future, be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal and commons in this present parliament assembled, and by the authority of the same, That from and after the twenty-fifth day of *March* in the year of our Lord one thousand seven hundred and fifty-four, all banns of matrimony shall be published in an audible manner in the parish church, or in some publick chapel, in which publick chapel banns of matrimony have been usually published, of or belonging to such parish or chapelry wherein the persons to be married shall dwell, according to the form of words prescribed by the rubrick prefixed to the office of matrimony in the book of Common Prayer, upon three *Sundays* preceding the solemnization of marriage, during the time of morning service, or of evening service (if there be no morning service in such church or chapel upon any of those *Sundays*) immediately after the second lesson: And whensoever it shall happen that the persons to be married shall dwell in divers parishes or chapelries, the banns shall in like manner be published in the church or chapel belonging to such parish or chapelry wherein each of the said persons shall dwell; and where both or either of the persons to be married shall dwell in any extraparochial place, (having no church or chapel wherein banns have been usually published) then the banns shall in like manner be published in the parish church or chapel belonging to some parish or chapelry adjoining to such extraparochial place: And where banns shall be published in any church or chapel belonging to any parish adjoining to such extraparochial place, the parson, vicar, minister or curate, publishing such banns, shall, in writing under his hand, certify the publication thereof in such manner as if either of the persons to be married dwelt in such adjoining parish; and that all other the rules prescribed by the said rubrick concerning the publication of banns, and the solemnization of matrimony, and not hereby altered, shall be duly observed; and that in all cases where banns shall have been published, the marriage shall be solemnized in one of the parish churches or chapels where such banns have been published, and in no other place whatsoever.

Sec. 2. “ Provided always, and it is hereby further enacted, That no parson, vicar, minister or curate shall be obliged to publish the banns of matrimony between any persons whatsoever, unless the persons to be married

Publication
of banns.

Minister to
sign the pub-
lication;
and the mar-
riage to be
solemnized in
one of the
churches
where the
banns have
been publish-
ed.

Notice of the
names, places
of abode, and
time of resi-

ried

dence of the parties to be given to the minister seven days before publication of banns.

ried shall, seven days at the least before the time required for the first publication of such banns respectively, deliver or cause to be delivered to such parson, vicar, minister or curate, a notice in writing of their true Christian and surnames, and of the house or houses of their respective abodes within such parish, chapelry or extraparochial place as aforesaid, and of the time during which they have dwelt, inhabited or lodged in such house or houses respectively.

Minister not punishable for solemnizing marriage after banns published, where the parents or guardians give no notice of dissent; but where such dissent shall be given, publication of banns to be void.

Secl. 3. " Provided always, and be it enacted by the authority aforesaid, That no parson, minister, vicar or curate solemnizing marriages after the twenty-fifth day of *March* one thousand seven hundred and fifty-four, between persons, both or one of whom shall be under the age of twenty one years, after banns published, shall be punishable by ecclesiastical censures for solemnizing such marriages without consent of parents or guardians, whose consent is required by law, unless such parson, minister, vicar or curate shall have notice of the dissent of such parents or guardians; and in case such parents or guardians, or one of them, shall openly and publicly declare, or cause to be declared in the church or chapel where the banns shall be so published, at the time of such publication, his, her or their dissent to such marriage, such publication of banns shall be absolutely void.

Licences to be granted to solemnize matrimony in the church or chapel of such parish only, where one of the parties shall have resided for 4 weeks before, &c.

Secl. 4. " And it is hereby further enacted, That no licence of marriage shall, from and after the said twenty-fifth day of *March* in the year one thousand seven hundred and fifty-four, be granted by any archbishop, bishop, or other ordinary or person having authority to grant such licences, to solemnize any marriage in any other church or chapel, than in the parish church or public chapel of or belonging to the parish or chapelry, within which the usual place of abode of one of the persons to be married shall have been for the space of four weeks immediately before the granting of such licence; or where both, or either of the parties to be married shall dwell in any extraparochial place, having no church or chapel wherein banns have been usually published, then in the parish church or chapel belonging to some parish or chapelry adjoining to such extraparochial place, and in no other place whatsoever.

Places which may be deemed extraparochial by this act.

Secl. 5. " Provided always, and be it enacted by the authority aforesaid, That all parishes, where there shall be no parish church or chapel belonging thereto, or none wherein divine service shall be usually celebrated every *Sunday*, may be deemed extraparochial places for the purposes of this act, but not for any other purpose.

Archbishop of Canterbury's right to grant special licences retained.

Secl. 6. " Provided always, That nothing herein before contained shall be construed to extend to deprive the archbishop of *Canterbury* and his successors, and his and their proper officers, of the right which hath hitherto been used, in virtue of a certain statute made in the twenty fifth year of the reign of the late king *Henry* the Eighth, intituled, *An act concerning Peter Pence and dispensations*; of granting special licences to marry at any convenient time or place.

Stronzo deputed to grant them.

Secl. 7. " Provided always, and be it enacted, That from and after the twenty fifth day of *March* in the year one thousand seven hundred and fifty-

fifty four, no surrogate deputed by any ecclesiastical judge, who hath power to grant licences of marriage, shall grant any such licence before he hath taken an oath before the said judge faithfully to execute his office, according to law, to the best of his knowledge, and hath given security by his bond in the sum of one hundred pounds to the bishop of the diocess, for the due and faithful execution of his said office.

Sec. 8. " And whereas many persons do solemnize matrimony in prisons and other places without publication of banns, or licence of marriage first had and obtained; therefore, for the prevention thereof, be it enacted, That if any person shall, from and after the said twenty-fifth day of *March* in the year one thousand seven hundred and fifty-four, solemnize matrimony in any other place than a church or public chapel, where banns have been usually published, unless by any special licence from the archbishop of *Canterbury*; or shall solemnize matrimony without publication of banns, unless licence of marriage be first had and obtained from some person or persons having authority to grant the same, every person knowingly and wilfully so offending, and being lawfully convicted thereof, shall be deemed and adjudged to be guilty of felony, and shall be transported to some of his majesty's plantations in *America* for the space of fourteen years, according to the laws in force for transportation of felons; and all marriages solemnized from and after the twenty-fifth day of *March* in the year one thousand seven hundred and fifty-four, in any other place than a church or such public chapel, unless by special licence as aforesaid, or that shall be solemnized without publication of banns, or licence of marriage from a person or persons having authority to grant the same, first had and obtained, shall be null and void to all intents and purposes whatsoever.

Sec. 9. " Provided, That all prosecutions for such felony shall be commenced within the space of three years after the offence committed.

Sec. 10. " Provided always, That after the solemnization of any marriage, under a publication of banns, it shall not be necessary in support of such marriage, to give any proof of the actual dwelling of the parties in the respective parishes or chapelries wherein the banns of matrimony were published; or where the marriage is by licence, it shall not be necessary to give any proof that the usual place of abode of one of the parties, for the space of four weeks as aforesaid, was in the parish or chapelry where the marriage was solemnized; nor shall any evidence in either of the said cases be received to prove the contrary in any suit touching the validity of such marriage.

Sec. 11. " And it is hereby further enacted, That all marriages solemnized by licence, after the said twenty-fifth day of *March* one thousand seven hundred and fifty-four, where either of the parties, not being a widow or widow, shall be under the age of twenty-one years, which shall be had without the consent of the father of such of the parties, so under age (if then living) first had and obtained, or if dead, of the guardian or guardians of the person of the party so under age, lawfully appointed, or

ces, to take an oath of office, and give security.

Persons convicted of solemnizing matrimony without banns or licence, or in any other place, &c. except by special licence,

to be transported,

and the marriages to be null.

Prosecution for the same to be commenced within 3 years.

Proof of the parties dwelling in the parishes, &c.

where marriages shall have been solemnized, not necessary to the validity of such marriage.

Marriages solemnized by licence without consent of the parents or guardians, where either of the parties (not being a

widower or widow shall be under age, void.

one of them; and in case there shall be no such guardian or guardians, then of the mother (if living and unmarried) or if there shall be no mother living and unmarried, then of a guardian or guardians of the person appointed by the court of Chancery; shall be absolutely null and void to all intents and purposes whatsoever.

Where the guardians or mother shall be *non compos mentis*, or in parts beyond the seas, or shall unreasonably withhold their consent, the parties may apply to the lord chancellor, &c. and being approved by order of the court, shall be effectual.

Sec. 12. “ And whereas it may happen, that the guardian or guardians, mother or mothers, of the parties to be married, or one of them, so under age as aforesaid, may be *non compos mentis*, or may be in parts beyond the seas, or may be induced unreasonably, and by undue motives to abuse the trust reposed in him, her or them, by refusing or withholding his, her or their consent to a proper marriage: Be it therefore enacted, That in case any such guardian or guardians, mother or mothers, or any of them, whose consent is made necessary as aforesaid, shall be *non compos mentis*, or in parts beyond the seas, or shall refuse or withhold his, her or their consent to the marriage of any person, it shall and may be lawful for any person desirous of marrying, in any of the before-mentioned cases, to apply by petition to the lord chancellor, lord keeper, or the lords commissioners of the great seal of *Great Britain* for the time being, who is and are hereby impowered to proceed upon such petition, in a summary way; and in case the marriage proposed, shall upon examination appear to be proper, the said lord chancellor, lord keeper, or lords commissioners of the great seal for the time being, shall judicially declare the same to be so by an order of court, and such order shall be deemed and taken to be as good and effectual to all intents and purposes, as if the guardian or guardians, or mother of the person so petitioning, had consented to such marriage.

No suit to be in the ecclesiastical court to compel a marriage *in facie ecclesiæ*, by reason of any contract.

Sec. 13. “ And it is hereby further enacted, That in no case whatsoever, shall any suit or proceeding be had in any ecclesiastical court, in order to compel a celebration of any marriage *in facie ecclesiæ*, by reason of any contract of matrimony whatsoever, whether *per verba de presenti*, or *per verba de futuro*, which shall be entered into after the twenty-fifth day of *March* in the year one thousand seven hundred and fifty-four; any law or usage to the contrary notwithstanding.

Churchwardens to provide books in which are to be registered all marriages and banns;

Sec. 14. “ And for preventing undue entries and abuses in registers of marriages; be it enacted by the authority aforesaid, That on or before the twenty-fifth day of *March* in the year one thousand seven hundred and fifty four, and from time to time afterwards as there shall be occasion, the church-wardens and chapel-wardens of every parish or chapelry shall provide proper books of vellum, on good and durable paper, in which all marriages and banns of marriage respectively, there published or solemnized, shall be registred, and every page thereof shall be marked at the top, with the figure of the number of every such page, beginning at the second leaf with number one; and every leaf or page so numbered, shall be ruled with lines at proper and equal distances from each other, or as near as may be; and all banns and marriages published or celebrated in any church or chapel, or within any such parish or chapelry, shall be respectively entered, registred, printed, or written upon or as near as conveniently

veniently may be to such ruled lines, and shall be signed by the parson, the same to be signed by the minister; vicar, minister or curate, or by some other person in his presence, and by his direction; and such entries shall be made as aforesaid, on or near such lines in successive order, where the paper is not damaged or decayed, by accident or length of time, until a new book shall be thought proper or necessary to be provided for the same purposes, and then the directions to belong to the parish, and to be kept for public use. aforesaid shall be observed in every such new book: and all books provided as aforesaid, shall be deemed to belong to every such parish or chapelry respectively, and shall be carefully kept and preserved for public use.

Sett. 15. " And in order to preserve the evidence of marriages, and to make the proof thereof more certain and easy, and for the direction of ministers in the celebration of marriages and registering thereof, be it enacted, That from and after the twenty-fifth day of *March* in the year one thousand seven hundred and fifty-four, all marriages shall be solemnized in the presence of two or more credible witnesses, besides the minister who shall celebrate the same; and that immediately after the celebration of every marriage, an entry thereof shall be made in such register to be kept as aforesaid; in which entry or register it shall be expressed, That the said marriage was celebrated by banns or licence; and if both or either of the parties married by licence, be under age, with consent of the parents or guardians, as the case shall be; and shall be signed by the minister with his proper addition, and also by the parties married, and attested by such two witnesses: which entry shall be made in the form or to the effect following; that is to say,

Form,

A. B. of *the*
this parish
and C. D. of *the*
this parish
were married in this *church*
chapel by *banns*
licence with consent of (*parents*
guardians) this
day of in the year
by me J. J. *rector*
vicar
curate

This marriage was solemnized between us A. B. in the presence of E. F.
C. D. G. H.

Sett. 16. " And be it further enacted by the authority aforesaid, That Persons convicted of making a false entry in the said register, if any person shall, from and after the twenty-fifth day of *March* in the year one thousand seven hundred and fifty-four, with intent to elude the force of this act, knowingly and wilfully insert, or cause to be inserted in the register book of such parish or chapelry as aforesaid, any false entry of any matter or thing relating to any marriage; or falsely make, alter, forge or counterfeit, or cause or procure to be falsely made, altered, forged or counterfeited, or act or assist in falsely making, altering, forging or counterfeiting any such entry in such register; or falsely make, alter,

or of forging, alter, forge or counterfeit, or cause or procure to be falsely made, altered, &c. any licence, forged or counterfeited, or assist in falsely making, altering, forging or counterfeiting any such licence of marriage as aforesaid; or utter or publish as true any such false, altered, forged or counterfeited register as aforesaid, or a copy thereof, or any such false, altered, forged or counterfeited licence of marriage, knowing such register or licence of marriage respectively, to be false, altered, forged or counterfeited; or if any person shall, from and after the said twenty-fifth day of *March* wilfully destroy, or cause or procure to be destroyed, any register book of marriages, or any part of such register book, with intent to avoid any marriage, or to subject any person to any of the penalties of this act; every person so offending, and being thereof lawfully convicted, shall be deemed and adjudged to be guilty of felony, and shall suffer death as a felon, without benefit of clergy.

Marriages of the Royal Family, and of Quakers and Jews, and of persons in Scotland, or beyond the seas, excepted.

Seet. 17. " Provided always, That this act, or any thing therein contained, shall not extend to the marriages of any of the Royal Family.

Seet. 18. " Provided likewise, That nothing in this act contained shall extend to that part of *Great Britain* called *Scotland*, nor to any marriages amongst the people called *Quakers*, or amongst the persons professing the *Jewish* religion, where both the parties to any such marriage shall be of the people called *Quakers*, or persons professing the *Jewish* religion respectively, nor to any marriages solemnized beyond the seas.

This act to be read in all parish churches and publick chapels.

Seet. 19. " And be it further enacted by the authority aforesaid, That this act shall be publicly read in all parish churches and publick chapels, by the parson, vicar, minister or curate of the respective parishes or chapelries, on some *Sunday* immediately after morning prayer, or immediately after evening prayer, if there shall be no morning service on that day, in each of the months of *September*, *October*, *November* and *December*, in the year of our Lord one thousand seven hundred and fifty-three, and afterwards at the same times, on four several *Sundays* in each year, (that is to say,) The *Sundays* next before the twenty fifth day of *March*, twenty-fourth day of *June*, twenty-ninth day of *September*, and twenty-fifth day of *December* respectively, for two years, to be computed from and immediately after the first day of *January* in the said year one thousand seven hundred and fifty-four."

Militia.

STAT. 2 Geo. 3. c. 20. [A. D. 1761, intituled] “ An act to explain, amend, and reduce into one act of parliament, the several laws, now in being, relating to the raising and training the militia within that part of Great Britain called England.”

“ *Whereas a well regulated militia has been found to be of great utility, and is of the utmost importance to the internal defence of this country: and whereas the laws now in force for the training and regulating thereof, are in some respects defective:* be it therefore enacted by the king’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in parliament assembled, and by the authority of the same, That from and after the passing of this act, his majesty, his heirs, and successors, may and shall issue forth commissions of lieutenancy, for the respective counties, ridings, and places, herein after mentioned; and the respective lieutenants thereby appointed shall have full power and authority, and they are hereby required to call together all such persons, and to arm and array them at such times, and in such manner, as is herein after expressed; and such respective lieutenants shall, from time to time, constitute and appoint such persons as they shall think fit, qualified as is herein after directed, and living within their respective counties, ridings, and places, to be their deputy lieutenants; the names of such persons having been first presented to, and approved by, his majesty, his heirs, or successors; and shall, before the times appointed for holding the third meetings of the deputy lieutenants and justices of peace within their respective subdivisions, for choosing by lot the persons to serve in the militia as herein after mentioned, appoint a proper number of colonels, lieutenant colonels, majors, and other officers, also qualified as is herein after directed, to train and discipline the persons so to be armed and arrayed, according to the rules, orders, and directions herein after provided, and shall certify to his majesty, his heirs, or successors, the names and ranks of such officers, within one month after they shall be so appointed; and in case his majesty, his heirs, or successors, shall, within one month after such certificate laid before his majesty, his heirs, or successors, signify his or their disapprobation of any person to be such officer in the militia, his majesty’s lieutenant shall not grant a commission to such person, but shall grant commissions to such persons so appointed, who shall not be disapproved of by his majesty, his heirs, or successors, as aforesaid.

Preamble.
The king to issue forth commissions of lieutenancy for the respective counties; the lord lieutenants empowered thereupon to assemble and arm the militia, and appoint deputy lieutenants, being first approved of by his majesty; and grant commissions to a proper number of officers, before the third meetings of the deputy lieutenants, for choosing the men by lot: Their names to be certified to his majesty

within a month after; and if he shall signify his disapprobation of any of them, no commission is to be granted to such.

The lord lieutenant being absent out of Great Britain, the king may authorize the deputy lieutenants to fill up vacant commissions.

Commissions of lieutenancy, deputations, and other commissions already granted, to stand

Secl. 2. " And be it enacted, That when the lieutenant of a county, riding, or place, shall be absent out of the kingdom of *Great Britain*, it shall and may be lawful for his majesty, his heirs, and successors, to authorize and appoint three deputy lieutenants to grant commissions to officers serving or to serve in the militia for such county, riding, or place, upon any vacancy that shall happen during the absence of the said lieutenants; which commissions shall be good and valid in like manner as if they had been granted by the lieutenant himself.

Secl. 3. " Provided always, and be it enacted, That nothing herein contained, shall be construed to vacate any commission of lieutenancy already granted by his majesty, nor any deputations granted to deputy lieutenants, nor any commissions granted to officers; but that the same shall continue in full force and vigour, for the purposes of this act, so as the said deputy lieutenants and officers be qualified as is herein after directed.

Deputation of deputy lieutenants, and officers commissions, not vacated by the revocation, &c. of the commission of lieutenancy.

Secl. 4. " Provided also, and be it enacted, That no deputation of any deputy lieutenant, nor any commission of any officer in the militia, already granted or to be granted by any lieutenant for any county, riding, or place respectively, shall be vacated by reason of the revocation, expiration, or discontinuance, of the commission by which such respective lieutenants were or shall be appointed.

Lord lieutenant to have the chief command of the militia of the county. Twenty or more deputy lieutenants to be appointed for every county, if so many can be found qualified.

Secl. 5. " And be it enacted, That his majesty's lieutenant of every county, riding, or place, shall have the chief command of the militia thereof which shall be raised by virtue of this act: and in every county, riding, or place, in *England* (except as is herein after excepted) there shall be appointed twenty or more deputy lieutenants, if so many persons qualified as is herein before and after expressed, can be therein found; and if twenty persons so qualified cannot be therein found, then there shall be appointed so many persons as can be therein found: and each person so to be appointed a deputy lieutenant or colonel, shall be seized or possessed, either in law or equity, for his own use and benefit, in possession of a freehold, copyhold, or customary estate for life, or for some greater estate, or of an estate for some long term of years, determinable on one or more life or lives, in manors, messuages, lands, tenements, or hereditaments, in *England, Wales*, or the town of *Berwick upon Tweed*, of the yearly value of four hundred pounds, or shall be heir apparent of some person who shall be, in like manner, seized or possessed of a like estate as aforesaid, of the yearly value of eight hundred pounds: and each person so to be appointed a lieutenant colonel, or major, shall be, in like manner, seized or possessed of a like estate as aforesaid, of the yearly value of three hundred pounds; or shall be heir apparent of some person who shall be, in like manner, seized or possessed of a like estate as aforesaid, of the yearly value of six hundred pounds: and each person so to be appointed a captain, shall be, in like manner, seized or possessed of a like

Qualification of a deputy lieutenant and colonel, 400l. per ann. of a lieutenant colonel and major, 300l. per ann. of a captain, 200l. per ann.

estate

estate as aforesaid, of the yearly value of two hundred pounds; or shall be heir apparent of some person who shall be, in like manner, seised or possessed of a like estate as aforesaid, of the yearly value of four hundred pounds; or shall be a younger son of some person who shall be, or, at the time of his death, was, in like manner, seised or possessed of a like estate as aforesaid, of the yearly value of six hundred pounds: and that each person so to be appointed a lieutenant shall be, in like manner, seised or possessed of a like estate as aforesaid, of the yearly value of one hundred pounds; or shall be son of some person who shall be, or, at the time of his death, was, in like manner, seised or possessed of a like estate as aforesaid, of the yearly value of two hundred pounds: and each person so to be appointed an ensign, shall be, in like manner, seised or possessed of a like estate as aforesaid, of the yearly value of twenty pounds; or shall be son of some person who shall be, or, at the time of his death, was, in like manner, seised or possessed of a like estate as aforesaid, of the yearly value of fifty pounds: one moiety of which said estates, required as qualifications for each deputy lieutenant, colonel, lieutenant colonel, major, and captain respectively, shall be situate or arising within such respective county or riding in which he shall be appointed to serve.

lieutenant,
100 l. per
ann.

and ensign,
20 l. per ann.
A moiety of
the estates re-
quisite to their
several quali-

fications, except those of the subaltern officers, to be within the county for which they serve.

Sec. 6. “ Provided always, and be it enacted, That for the purposes of the respective qualifications required by this act, the immediate reversion or remainder of and in manors, messuages, lands, tenements, or hereditaments, which are leased for one, two, or three life or lives, or for any term of years determinable upon the death of one, two or three life or lives, on reserved rents, and which are to the lessee or lessees of the clear yearly value of three hundred pounds, shall be deemed equal to an estate herein before described as a qualification of the yearly value of one hundred pounds, and so in proportion, be the said qualification of a greater or less degree.

What shall be
deemed equal
to an estate of
100 l. per ann.
and so in pro-
portion, re-
quisite to a
qualification.

Sec. 7. “ And be it enacted, That a person possessed either in law or equity, for his own use and benefit, in possession of an estate for a certain term originally granted for twenty years, or more, of an annual value, over and above all rents and charges payable out of or in respect of the same, equal to the annual value of such an estate as is required for the qualification of a deputy lieutenant, and commission officer of the militia respectively, and situate as aforesaid; shall be, and is hereby deemed and declared to be, duly and sufficiently qualified to act and serve under such respective commission.

A leasehold
estate origi-
nally granted
for twenty
years, equal
in annual va-
lue to what is
required for
the qualifica-
tion of a de-
puty lieuten-
ant and

commission officer, deemed a sufficient qualification.

Sec. 8. “ And be it enacted, That in the several counties of Cumberland, Huntingdon, Monmouth, Westmoreland, and Rutland, and of every county and place in the dominion of Wales respectively, there shall be five or more deputy lieutenants appointed (if so many persons qualified as herein after expressed can be therein found) and the estates requisite for the qualification of the respective deputy lieutenants and officers of the

Five or more
deputy lieutenants for
the counties
of Cumber-
land, Hunt-
ingdon, Mon-
mouth, West-
moreland,

militia

Rutland, and
principality
of Wales.

Qualification
of a deputy
lieutenant or
colonel for
those coun-
ties, 300l.

per ann.
of a lieute-
nant colonel,
200l. *per*
ann.

captain,
150l. *per*
ann.

lieutenant,
70l. *per ann.*
and ensign,
20l. *per ann.*

A moiety of
the estates re-
quisite to
their several
qualificati-
ons, except
for lieute-
nants and en-
signs, to be
within the
county for
which they
serve.

In those
counties
where 20 de-
puty lieute-
nants cannot
be found duly
qualified, and
willing to act,
so many with
a qualifica-
tion of 200l.

per ann. may
be appointed,
as will make
up that num-
ber, the whole

number for such county not to exceed 20.

Qualification
of deputy
lieutenants
and officers
for the isle of
Ely, viz. of a
deputy lieuten-
ant 200l.
per ann.

militia therein, shall be as follows; that is to say, a deputy lieutenant or colonel shall be, in like manner, seised or possessed of a like estate as aforesaid, of the yearly value of three hundred pounds; or shall be heir apparent of a person who shall be, in like manner seised or possessed of a like estate as aforesaid, of the yearly value of five hundred pounds: a lieutenant colonel, or major, shall be, in like manner, seised or possessed of a like estate as aforesaid, of the yearly value of two hundred pounds; or shall be heir apparent of a person who shall be, in like manner, seised or possessed of a like estate as aforesaid, of the yearly value of four hundred pounds: a captain shall be, in like manner, seised or possessed of a like estate as aforesaid, of the yearly value of one hundred and fifty pounds; or shall be son of a person who shall be, or, at the time of his death, was, in like manner, seised or possessed of a like estate as aforesaid, of the yearly value of three hundred pounds: a lieutenant shall be, in like manner, seised or possessed of a like estate as aforesaid, of the yearly value of seventy pounds; or shall be son of a person who shall be, or, at the time of his death, was, in like manner, seised or possessed of a like estate as aforesaid, of the yearly value of two hundred pounds: an ensign shall be, in like manner, seised or possessed of a like estate as aforesaid, of the yearly value of twenty pounds; or shall be son of a person who shall be, or, at the time of his death, was, in like manner, seised or possessed of a like estate as aforesaid, of the yearly value of fifty pounds: one half of all which respective estates, except those for the qualifications of lieutenants and ensigns, shall be situate or arising within such respective county or riding, in which such officers shall be respectively appointed to serve.

Sec. 9. " Provided always, That in such counties where twenty persons cannot be found qualified as aforesaid, and willing to act as deputy lieutenants, it may and shall be lawful for his majesty's lieutenant of any such county, and he is hereby required, after having appointed so many persons as can be found qualified as aforesaid, to appoint such number of persons to be deputy lieutenants as shall be requisite to make up the number twenty, who shall respectively be seised or possessed of a like estate of the yearly value of two hundred pounds, and situate as aforesaid: provided, that the persons so appointed shall not make the whole number of deputy lieutenants for the said county to exceed the number of twenty; and every such person shall be, and is hereby deemed and declared to be, duly and sufficiently qualified to act and serve under such respective commissioner.

Sec. 10. " And be it enacted, That the estates requisite for the qualification of the deputy lieutenants and officers of the militia in the isle of Ely, in the county of *Cambridge*, shall be as follows; a deputy lieutenant shall be seised or possessed of a like estate as aforesaid, of the yearly value of two hundred pounds; or shall be heir apparent of some person who shall be, in like manner, seised or possessed of a like estate as aforesaid, of

of the yearly value of four hundred pounds: a captain shall be, in like manner, seised or possessed of a like estate as aforesaid, of the yearly value of one hundred pounds; or shall be heir apparent of a person who shall be, in like manner, seised or possessed of a like estate as aforesaid, of the yearly value of two hundred pounds; or shall be a younger son of some person who shall be, or, at the time of his death, was, in like manner, seised or possessed of a like estate as aforesaid, of the yearly value of three hundred pounds: a lieutenant shall be, in like manner, seised or possessed of a like estate as aforesaid, of the yearly value of fifty pounds; or shall be son of some person who shall be, or, at the time of his death, was, in like manner, seised or possessed of a like estate as aforesaid, of the yearly value of one hundred pounds: an ensign shall be, in like manner, seised or possessed of a like estate as aforesaid, of the yearly value of twenty pounds; or shall be son of some person who shall be, or, at the time of his death, was, in like manner, seised and possessed of a like estate as aforesaid, of the yearly value of fifty pounds: one half of all which estates, except those for the qualifications of lieutenants and ensigns, shall be situate or arising within the said isle of *Ely*, or some other part of the county of *Cambridge*.
of a captain, 100l. per ann.
 lieutenant, 50l. per ann. and ensign, 20l. per ann.
 A moiety of the estates requisite to their several qualifications, except for lieutenants and ensigns, to be in the isle of Ely, or com. Cambridge.

Sec. 11. “ And be it enacted, That in all cities or towns which are counties within themselves, and have heretofore been impowered, by law or antient use, to raise and train a separate militia within their several precincts and liberties, and which are by this act united with, and made part of, any county or counties for the purposes of this act only; his majesty’s lieutenants of such cities or towns, or, where there is no lieutenant appointed by his majesty, the chief magistrate of such city or town, shall appoint five or more deputy lieutenants (if so many persons qualified as is herein after expressed can therein be found) and shall also appoint officers of the militia, whose number and rank shall be proportionable to the number of militia men which such city or town shall raise, as their *quota*, towards the militia of the county to which such city or town is, by this act, united for the purposes aforesaid; the qualification of which officers respectively shall be as is herein after mentioned; and all powers given, and provisions made, by this act, with respect to counties at large, and the militia thereof, and the registering the qualifications of deputy lieutenants and officers, shall take place and be in force with respect to the said cities and towns, and the militia thereof, and the registering the said qualifications, except only as to the particulars herein expressed and otherwise provided for; that is to say, after the number of persons which such city or town is to furnish to the militia shall have been appointed, as is herein after directed, by his majesty’s lieutenant and the deputy lieutenants, or by the deputy lieutenants of the county at large of the militia whereof the militia of such city or town is, by this act, made a part; any two or more of the deputy lieutenants, within such city or town, shall have and exercise all the powers conferred by this act on any three deputy lieutenants, or any two deputy lieutenants together with any one justice of the peace, or any one deputy lieutenant together with any two justices of the peace of three deputy lieutenants, any &c.
Five or more deputy lieutenants to be appointed for such cities and towns as are counties within themselves; and officers proportionable to the quota of men. All powers and provisions in the act respecting counties at large, extended to the said cities and towns; except, that after the number of men they are to furnish, is appointed, two deputy lieutenants may exercise all the powers conferred by the act on any three deputy lieutenants, any &c.

The qualification for such cities and towns, viz.

of a deputy lieutenant, and field officer, 500*l. per ann.*

of a captain, 150*l. per ann.*

lieutenant or ensign, 50*l. per ann.*

A moiety of the estates requisite to their several qualifications, except for lieutenants and ensigns, to be within the same, or the county at large to which they are united; and the militia thereof to join that of the county, and to be exercised together with them at the general exercise; and when drawn out and embodied, to be deemed part thereof.

any county at large: and the value of the respective qualifications of the deputy lieutenants and officers of the militia of such cities or towns, shall be as follows; every deputy lieutenant and field officer shall respectively be seised or possessed of a like estate as aforesaid, of the yearly value of three hundred pounds; or shall be possessed of a personal estate alone, or seised or possessed of real and personal estate together, to the amount or value of five thousand pounds: and the qualification of a captain shall be a like estate as aforesaid, of the yearly value of one hundred and fifty pounds, in manors, messuages, lands, tenements, or hereditaments, or personal estate alone, or seised or possessed of real and personal estate together, to the amount or value of two thousand five hundred pounds: and the qualification of a lieutenant or ensign shall be a like estate as aforesaid, of the yearly value of fifty pounds, in manors, messuages, lands, tenements, or hereditaments, or personal estate alone, to the amount or value of seven hundred and fifty pounds: one half of all which real estates respectively (except those for the qualifications of lieutenants and ensigns) shall be situate or arising within such city or town, or within the county at large to which such city or town is, by this act, united for the purposes aforesaid; and his majesty's lieutenants and the chief magistrates of such cities or towns, being counties in themselves, respectively, shall, and they are hereby required to put the powers conferred by this act, for raising and training the militia within such cities or towns, into execution; but the militia of such cities and towns as aforesaid being, by this act, declared to be part of the militia of the counties to which such cities and towns are united for the purposes aforesaid, the militia of such cities or towns shall join the militia of the county to which such cities or towns are so united for the purposes aforesaid; and the whole militia so joined together, shall be exercised together at the general exercise, and shall then, and also when drawn out and embodied, be deemed the militia of the county to which such cities or towns are united for the purposes aforesaid: and when drawn out and embodied, to be deemed part thereof.

Officers may be promoted for their military merit in time of actual invasion, or rebellion, though they want a proper qualification; but none to be promoted higher than a captain, who

Sec. 12. " And be it enacted, That when any regiment or battalion of militia shall be drawn out and embodied, his majesty's lieutenant of the county, riding, or place, for which such regiment or battalion shall serve, may, upon account of military merit shewn in time of actual invasion, or actual rebellion, promote any officer therein from a lower to a higher commission, inclusive of that of lieutenant colonel, notwithstanding he should not have the qualifications requisite for his first admittance into such higher rank in such regiment or battalion: provided, that no persons not having the qualification herein before directed for a captain, shall be promoted to an higher rank than that of captain.

Recited qualifications not to extend to commissions

Sec. 13. " And be it enacted, That the qualifications above recited to enable any person to be a deputy lieutenant, lieutenant colonel, major, captain, lieutenant, or ensign, shall not extend to such commissions as shall

shall be granted by his majesty's constable of the tower, or lieutenant of the tower hamlets.

granted by
the constable
of the tower,
or lieutenant of the tower hamlets.

Sec. 14. " And be it enacted, That his majesty, his heirs, and successors, shall, from time to time, as he and they shall think fit, signify his and their pleasure to his and their lieutenants of any county, riding, or place, to displace all or any such deputy lieutenants and officers; and thereupon his majesty's respective lieutenants shall appoint others within the same county, riding, or place, under the like qualifications, to serve in their stead.

Deputy lieutenants and officers may be displaced at the king's pleasure; and others to be appointed in their room.

Sec. 15. " And be it enacted, That no deputy lieutenant or commission officer in the militia shall act as such, until he shall have left with the clerk of the peace of the county, riding, or place, in and for which he shall be so appointed, his qualification in writing, signed by himself; and such clerk of the peace is hereby required to enter the same upon a roll to be kept for that purpose: and every deputy lieutenant and commission officer not having already taken and subscribed the oaths, and made, repeated, and subscribed, the declaration, as required by the said former acts relating to the militia, shall, at some general quarter sessions, or in one of his majesty's courts of record at *Westminster*, within six months after he shall have accepted his commission, take the oaths in and by an act passed in the first year of the reign of his majesty king George the First, intituled, *An act for the further security of his majesty's person and government, and the succession of the crown in the heirs of the late princess Sophia, being protestants, and for extinguishing the hopes of the pretended prince of Wales, and his open and secret abettors*, appointed to be taken, and shall also make, repeat, and subscribe, the declaration in the said act directed, to be made, repeated, and subscribed, by all officers civil and military.

Qualifications to be signed, and left with the clerk of the peace to be inrolled, before they presume to act; and they are to take the oaths appointed by act 1 Geo. 1. and make and subscribe the declaration therein appointed.

Sec. 16. " And be it enacted, That if any person shall execute any of the powers hereby conferred on deputy lieutenants, colonels, lieutenant colonels or majors (not being qualified as aforesaid) or shall not deliver in such qualification, and take the oaths, and make, repeat, and subscribe, the declaration aforesaid, as is herein before required, every such person shall forfeit and pay the sum of two hundred pounds: and if any person shall execute any of the powers hereby conferred on captains, lieutenants, or ensigns (not being qualified as aforesaid) and shall not deliver in such qualification, and take the oaths, and make, repeat, and subscribe, the declaration aforesaid, as is herein before required, every such person shall forfeit and pay the sum of one hundred pounds: such several penalties to be recovered by action of debt, bill, plaint, or information, in any of his majesty's courts of record at *Westminster*; wherein no essoin, wager of law, or protection, or more than one imparlance shall be allowed; one moiety whereof shall go to the use of the person who shall sue for the same, and the other moiety to the uses herein after directed.

Deputy lieutenants and other field officers, acting, not being qualified, or not complying with the above regulations, forfeit 200l. and captains and subalterns 100l. to be recovered in any of the courts at Westminster; one moiety thereof to go to the prosecutor.

Proof of qualification in all suits to lie on the defendant.

Peers, and heirs apparent of peers, may be appointed deputy lieutenants or commission officers for the county where they reside; and their qualification not necessary to be left with the clerk of the peace; but on taking the oaths, &c. they may act without being otherwise qualified.

Acceptance of a commission does not vacate a seat in parliament. Where the militia is not raised, the lord lieutenant is to advertise the want of officers, a month before the quarter sessions at Christmas, and Midsummer, &c.

Where the militia has not been raised in pursuance of the act of 30 Geo. 2. and other subsequent acts relating thereto, or shall not be raised in

Sett. 17. " And be it enacted, That in every action, suit, or information, brought against any person for acting as a deputy lieutenant, colonel, lieutenant colonel, major, captain, lieutenant, or ensign, not being qualified as herein before is directed, the proof of his qualification shall lie upon the person against whom the same is brought.

Sett. 18. " Provided always, and be it enacted, That nothing in this act contained shall extend, or be construed to extend, to restrain his majesty's lieutenant of any county, riding, or place, from appointing any peer of this realm, or heir apparent of any such peer, to be a deputy lieutenant, or commission officer in the militia, within the county, riding, or place, wherein such peer, or heir apparent of such peer, shall respectively have some place of residence; or to oblige any peer of this realm, or heir apparent of such peer (so appointed a deputy lieutenant or commission officer respectively) to leave with the clerk of the peace for the county, riding, or place, for which he shall be appointed, any qualification in writing as aforesaid; but it shall be lawful for every peer of this realm, or heir apparent of such peer, so appointed, and taking the oaths, and making, repeating, and subscribing, the declaration aforesaid, to act as a deputy lieutenant or commission officer respectively, although he shall not be seised or possessed of any such estate, in manors, messuages, lands, tenements, or hereditaments, as is required by this act.

Sett. 19. " Provided also, and be it enacted, That the acceptance of a commission in the militia shall not vacate the seat of any member returned to serve in parliament.

Sett. 20. " And be it further enacted by the authority aforesaid, That in every county where the militia shall not be raised, the lord lieutenant of such county shall, within one month before the general quarter sessions to be held at *Chr. stmas*, and within one month before the general quarter sessions to be held next after *Midsummer*, in every year, cause advertisements to be published in the *London Gazette*, and the news paper of such county, signifying the want of officers; and all persons qualified to serve as officers, and willing so to do, shall at any time return their names and intention to the lord lieutenant, or, in his absence, to any general quarter sessions for the county in which they propose to serve.

respective; and persons qualified, and willing to serve, are thereupon to return their names, &c.

Sett. 21. " And whereas in several counties and places the militia have not been raised in such manner as was authorized by an act made in the thirtieth year of the reign of his late majesty king *George* the second, and several subsequent acts, relative to the raising of the militia forces, by reason that a sufficient number of persons, qualified to act as officers in the militia, did not tender themselves to accept commissions in that service; be it therefore enacted by the authority aforesaid, That in all counties and places where the militia have not been raised by virtue and in pursuance of the said former acts, and where it shall not be raised by virtue and in pursuance of

this

this act, the sum of five pounds shall be annually paid for and in lieu of every private militia man herein mentioned to be raised within the same; and that his majesty's lieutenant of every such county and place respectively, or any three or more deputy lieutenants, at the expiration of every year in which the militia for such county and place shall not have been raised from and after the passing of this act, shall from year to year, certify the same in writing under his or their hands, and also the whole amount of the several sums of five pounds *per* man to be raised on such county as aforesaid, to the justices of the peace at their general or quarter sessions next held after the full end and accomplishment of the said year for such respective county or place: and the justices of the peace, so assembled at such general or quarter sessions, where such certificate shall be produced, shall forthwith rate and assess on the said county the sum and sums mentioned in such certificate: and such sum and sums shall be rated and assessed in such and the same manner, and according to such and the same proportions, upon every town, parish, and place within the said county, and be collected, received, levied, and paid, and be accounted for by the persons making such collections, in such manner, and by such means, with such powers of distress, and other remedies for enforcing the collection and payment thereof, and for punishing all persons whose duty it shall be to collect or account for the same, and shall make default therein, as the county rates have been usually, or may, by an act made in the twelfth year of the reign of his late majesty, intituled, *An act for the more easy assessing, collecting, and levying of county rates*, or by any other act or acts of parliament, be assessed, collected, received, levied, paid, and accounted for, within the said county: and such rates or assessments, when received, shall be from time to time paid by the treasurer or treasurers of such counties to the receivers general thereof; and the receipt of such receiver general shall be a full and sufficient discharge to such treasurer or treasurers for the payment of such monies.

Secl. 22. "Provided always, That the rates or assessments which shall be made by such justices of the peace at the said general or quarter sessions in pursuance of this act, shall be made, assessed, collected, received, levied, and paid, separately and distinctly from all the other county rates assessed and raised upon and within the said county; any thing in the said act made in the twelfth year of his late majesty's reign, or any other act or acts of parliament, or any custom or usage, to the contrary notwithstanding.

Secl. 23. "And be it further enacted by the authority aforesaid, That the several and respective parochial officers, or other persons, who shall pay, or be liable to pay the rates or assessments, which shall be made and rated for the purpose of this act, upon any parish, town, and place; and also all such parochial officers and persons, upon whom any such rate or assessment shall be levied; shall and may, from time to time, after notice shall be given of the amount of the rate or assessment, upon such town, parish, or place, either before the payment thereof by such parochial officers or persons, or after the same shall have been actually paid by, or levied upon, such officers or persons, rate and levy such monies, by a separate and distinct rate and assessment, upon every such respective town, parish, or place, in such

pursuance of this act, 5 l. *per* man, annually, is to be paid by every such county, &c. and certifies thereof, and of the sums thereupon due, are to be returned at the end of the next year to the quarter sessions and the justices are forthwith to rate and assess the sums so certified, in like manner as county rates, by act 12 Geo. may be rated and assessed, &c. and the treasurer of the county is to pay over the same to the receiver general.

The said rate to be made, levied, and paid, distinctly from all other county rates.

After notice given of the amount of the rates, the parochial officers, &c. are to rate and levy the monies by a distinct rate and assessment upon the respective towns, par-

riches, and places; and tenants and occupiers paying the same, are to be allowed what they shall so pay in their rent.

manner and proportion, and with such powers for recovery thereof, as any other county rate may be assessed or levied: and that every tenant or occupier of any house, land, tythe, tenement, or hereditament, who shall pay any rate or assessment to be made in pursuance of this act by such respective parochial officers or persons, within any such town, parish, or place, or upon whom any such rate or assessment shall be levied, shall and may deduct the same out of his or her rent, and shall be acquitted and discharged for so much money as such rates or assessments shall, from time to time, amount unto, as fully and effectually as if such money had been actually paid to the person or persons to whom such rent is or shall be payable; and such person or persons is and are hereby required to allow, from time to time, such deductions, upon receipt of the residue of the rent.

Agreement between landlord and tenant not vacated, where the estate leased is not let at rack rent; and landlord to allow only in proportion

Sett. 24. " Provided always, That nothing herein before contained, shall vacate any covenant or agreement contained in any lease between landlord and tenant, where the estate leased is not let at rack rent; and that no landlord of any estate which shall not be let at rack rent, shall be obliged or compellable to allow to any tenant any money which he or she shall pay towards any county rate, which shall be made in pursuance of this act, but in proportion only to the rent such landlord shall receive from his tenant.

Where the militia for any county, together with any city or town being a county of itself, is not raised, the sum of 5 l. *per* man is to be apportioned between them, in such proportion as their respective quotas to the land tax bear to each other; but if an apportionment

of the men shall have been made, the said sum is to be borne them in such proportion as the numbers of men to be raised by them respectively bear to each other.

Receiver general to pay over the said county rates, together with the land tax, into the Exchequer, di-

Sett. 25. " Provided always, and be it enacted, That in all cases where a certain number of private militia men are directed to be raised for any county, together with any city or town being a county of itself, and the militia has not been, or shall not be, raised, for such county, and city or town, the payment of the said sum of five pounds *per* man, upon the whole number of private militia men so directed to be raised as aforesaid, shall be divided and apportioned between such county, and such city or town being a county of itself, in such proportion as the respective *Quotas* paid to the land tax by the said county, and by the said city and town being a county of itself, bear to each other; unless an apportionment of the said number of private militia men shall actually have been made in pursuance of the list directed to be returned by the said former acts, or by this present act, in which case the said sum of five pounds *per* man shall be borne by such county, and by such city or town being a county of itself, in such proportion as the respective numbers of men so apportioned to be raised by such county, and by such city or town, bear to each other.

Sett. 26. " And be it further enacted by the authority aforesaid, That the receiver general of the land tax for such respective counties or places, to whom such money shall be paid by the treasurer or treasurers of such counties as aforesaid, shall pay the same, together with the monies arising from the land tax in such county, into the receipt of his majesty's Exchequer at *Westminster*, and distinguish upon every such payment the monies

nies received by virtue of this act; and the monies so paid into the receipt of his majesty's Exchequer shall be kept separate and apart from all other monies, and shall be paid by the lord high treasurer, or by the commissioners for executing the office of lord high treasurer, or any three or more of them, for the time being, to the treasurers of such counties as have raised or shall raise their militia, in proportion to the number of men raised or to be raised by each county respectively, to be by them made part of the county stock; and the lord high treasurer, or the commissioners for executing the office of lord high treasurer for the time being, or any three or more of them, are hereby impowered and required to apportion and issue the said money so received accordingly; and no allowance or deduction shall be made from or out of the said sums of money so paid into the Exchequer on any account whatsoever.

of men, to be made part of the county stock. No deduction to be made from the monies so paid into the Exchequer.

Señ. 27. " Provided nevertheless, That if the militia shall be raised in the manner appointed by virtue of this act, for all or any of the said counties or places, such respective counties and places shall, during the time the militia are so raised, be exonerated, freed, and discharged, from the payment of the said sums, and the assessments to be made in respect thereof shall, during such time, be suspended; any thing herein contained to the contrary notwithstanding.

Señ. 28. " And be it enacted, That it shall be lawful for the lieutenant of any county, riding, or place, to act as a colonel of any regiment or battalion of militia for such county, riding, or place, for and during such time or times as there shall not be any colonel appointed for the command of the same regiment or battalion; but no lieutenant shall at any one time act as a colonel to more than one regiment or battalion.

Señ. 29. " And be it enacted, That where his majesty's lieutenant of any county, riding, or place, shall, under the powers given by this act, serve as colonel to any body of militia by this act deemed a battalion only, he shall not, when such battalion shall be embodied and in actual service, be intitled to or receive any other pay than that of a lieutenant colonel; and that no other person whatsoever shall serve or be intitled to pay as a lieutenant colonel in such battalion, during the time that his majesty's said lieutenant shall serve therein as colonel.

intituled to pay as lieutenant colonel, while he serves as colonel.

Señ. 30. " And be it enacted, That his majesty's lieutenant, together with any three deputy lieutenants of any county, riding, or place, and on the death or removal, or in the absence of his majesty's lieutenant, any five deputy lieutenants, shall, at the end of every four years, at their annual meeting in case the militia of such county, riding, or place, shall not be then embodied, discharge some one field officer of each regiment or battalion, and such a number of officers of each inferior rank as shall

be to the number

of persons who shall have been returned as willing to serve, are to be discharged. be equal to the number of persons who shall have given notice in writing to his majesty's lieutenant one month at least before such meeting, that they are willing to serve as field officers, captains, lieutenants, or ensigns, as the case may require.

The number of such vacancies not to exceed one third in each rank. *Señ. 31.* " Provided, That the number of vacancies to be made shall not exceed one third of such officers, who shall have served for the space of four years in each rank respectively.

Officer who has served 4 years, may offer to serve in a higher rank, if qualified. *Señ. 32.* " Provided, That nothing herein contained shall prevent any officer who has served four years, from offering himself to serve in an higher rank, if he be qualified as this act requires to serve in such higher rank.

An adjutant may be appointed by the king to each regiment, &c out of his majesty's other forces, or embodied militia; and if appointed out of his majesty's other forces, he is to keep his rank therein, and may hold a subaltern commission without a qualification. *Señ. 33.* " And be it enacted, That his majesty, his heirs, and successors, may and shall appoint one proper person who shall have served, or shall, at the time of such appointment, actually serve in some of his majesty's other forces, or in any corps of militia that has been drawn out and embodied, to be an adjutant to each regiment, battalion, or independent company of militia, in each county, riding, or place respectively; and such adjutant, if appointed out of his majesty's other forces, shall, during his service in the said militia, preserve his rank in the army, in the same manner as if he had continued in that service: and it shall and may be lawful for his majesty's lieutenant of any county, riding, or place, to grant unto the adjutant to each regiment, battalion, or independent company, a commission of lieutenant, or any inferior commission therein, although such adjutant shall not have an estate to qualify him for such commission as is required by this act.

Militia officer exempted from serving as sheriff. *Señ. 34.* " And be it enacted, That no person, during the time he is acting as a militia officer, shall be obliged to serve the office of sheriff.

Officers quitting their half-pay to serve in the militia, upon quitting the militia, or unimbedded, are to be restored to the half-pay again. *Señ. 35.* " And be it enacted, That any person who has quitted, or shall quire, his half pay, to serve as a commissioned officer in any regiment, battalion, or independent company of militia, shall, upon his quitting the said regiment, battalion, or independent company of militia, or upon the unembodying thereof, be restored to his half-pay; such half pay to recommence from the last quarter-day, or day of payment next preceding.

Serjeants may be appointed by the king out of his majesty's other forces, or embodied. *Señ. 36.* " And be it enacted, That his majesty, his heirs, and successors, may and shall appoint, according to the proportion of one serjeant to twenty private men, two or more proper persons to be serjeants to every company in the said militia, out of and from his majesty's other forces; such person having served in the said forces for the space of one year

year next preceeding their appointment to be serjeants; or may appoint such other persons to be serjeants, as have formerly served for the space of one year in his majesty's said forces; or out or from any corps of militia that has been drawn out and embodied; which serjeants so appointed shall take the following oath; that is to say,

militia, in the proportion of 1 serjeant to 20 private men, 2 or more to every company.

I A. B. do sincerely promise and swear, That I will be faithful and bear true allegiance to his majesty king George, his heirs and successors: and I do swear that I am a protestant, and that I will faithfully serve as a serjeant in the militia, within the kingdom of Great Britain, for the defence of the same, until I shall be legally discharged.

Oath to be taken by serjeants.

And the service in the militia of such persons so appointed out of his majesty's said other forces, shall intitle them to the benefit of *Chelsea Hospital*, in the same manner as if they had continued to serve in the said forces; and every person appointed to be a serjeant out of the pensioners on the establishment of *Chelsea hospital*, shall be intituled to be, and shall be, put again upon the said establishment, after he shall be discharged from the service of the militia; provided he brings a certificate of his good behaviour, under the hand of the colonel, or commanding officer of the regiment or battalion in which he shall have served: and his majesty's lieutenant shall, from time to time, as occasion shall require, appoint a clerk to each regiment or battalion; and the colonel of the regiment or battalion, or, where there is no colonel, the lieutenant colonel, or where there is no colonel or lieutenant colonel, the major, shall appoint a serjeant major out of the serjeants, and a drum major out of the drummers.

Serjeants appointed out of his majesty's other forces, are intituled to *Chelsea hospital*; and pensioners of the said hospital, made serjeants, are to be readmitted, on producing certificates of good behaviour.

Lord lieutenant to appoint a regimental clerk, and the colonel, &c. a serjeant major, and drum major, to each regiment.

Sec. 37. "And be it enacted, That no person who shall keep any house of public entertainment, or who shall sell any ale, wine, brandy, or other spirituous liquors by retail, shall be capable of being appointed or continuing a serjeant in the militia.

Alehouse-keepers disqualified from being serjeants.

Sec. 38. "And be it enacted, That the captain of every company of militia may and shall appoint two persons to be drummers or fifers to his company, who, when so appointed, and having received any pay as such shall be deemed to be engaged, and shall be compellable to serve in the same regiment or battalion, until legally discharged; and may and shall appoint corporals out of the private men of his company, in the proportion of one corporal to twenty private men; and may displace such drummers, fifers, and corporals respectively, for misbehaviour, and appoint others in their room, from time to time, as he shall see occasion; and may and shall appoint, (with the approbation of the colonel, or, where there is no colonel, the lieutenant colonel, or, where there is no colonel or lieutenant colonel, the major of the regiment or battalion) serjeants out of the private men of the regiment or battalion, to fill up such vacancies of serjeants as may happen therein; which serjeants so appointed, shall take the like oath as is herein before required to be taken by serjeants appointed

Captain may appoint two drummers or fifers to his company; and one corporal to 20 men; and may displace them for misbehaviour; he may also, with leave of the colonel, fill up vacancies of serjeants out of the ranks.

by Such serjeants.

ants to take
the oath ap-
pointed.

They may be
displaced up-
on applica-
tion of the
captain.

Serjeants
from the
army being
reduced for
misbehaviour,
and not re-
stored within
a month, are
to be return-
ed to the
corps from
whence they
were taken,
and serve in
the ranks.

Serjeants

made from the militia may be reduced into the ranks for misbehaviour,

The inlisting
of a serjeant,
drummer, or
fifer, into his
majesty's other forces,

Number of
private men
to be raised
in each
county, &c.

by his majesty (which oath any one deputy lieutenant, or in case the regi-
ment or battalion then happening to be embodied should be in any other
county, riding, or place, any one justice of the peace thereof, are hereby
respectively authorized to administer) and that it shall be lawful for the
commanding officer of any regiment or battalion of militia, being a field
officer, upon the application of the captain, to displace serjeants.

Señ. 39. " Provided always, and be it enacted, That any person who
is or shall be appointed out of or from any company of his majesty's other
forces, to be a serjeant in the militia, and shall be for any misbehaviour
reduced into the ranks, and shall not in one month's time after such re-
duction be restored, he shall be returned to the company from which he
was taken in his majesty's other forces, and shall there serve as a private
man; and any person who is or shall be appointed a serjeant in the mili-
tia, out of or from any company of militia, shall and may be reduced into
the ranks for misbehaviour, and shall serve in the ranks of such company
wherein he served before such appointment, for such further time as shall
compleat his three years service as a private militia man; and in case
there be no vacancy in such company, he shall serve in any other company
in the regiment or battalion.

Señ. 40. " And be it enacted, That if any serjeant, drummer, or fifer,
shall inlist in any of his majesty's other forces, such inlisting shall be, and
is hereby declared to be, null and void.

Señ. 41. " And be it enacted, That the number of private men to be
raised by virtue of this act, in that part of *Great Britain* called *England*, the
dominion of *Wales*, and town of *Berwick upon Tweed* (exclusive of the
places herein after excepted) shall be,

For the county of *Bedford*, four hundred.

For the county of *Berks*, five hundred and sixty.

For the county of *Bucks*, five hundred and sixty.

For the county of *Cambridge*, four hundred and eighty.

For the county of *Chester*, with the city and county of the city of *Chester*,
five hundred and sixty.

For the county of *Cornwall*, six hundred and forty.

For the county of *Cumberland*, three hundred and twenty.

For the county of *Derby*, five hundred and sixty.

For the county of *Devon*, with the city and county of the city of *Exeter*,
one thousand six hundred.

For the county of *Dorset*, with the town and county of the town of
Pool, six hundred and forty.

For the county of *Durham*, four hundred.

For the county of *Essex*, nine hundred and sixty.

For the county of *Gloucester*, with the city and county of the city of
Gloucester, and the city and county of the city of *Bristol*, nine hundred and
sixty.

For

- For the county of *Hereford*, four hundred and eighty.
- For the county of *Hertford*, five hundred and sixty.
- For the county of *Huntingdon*, three hundred and twenty.
- For the county of *Kent*, with the city and county of the city of *Canterbury*, nine hundred and sixty.
- For the county of *Lancaster*, eight hundred.
- For the county of *Leicester*, five hundred and sixty.
- For the county of *Lincoln*, with the city and county of the city of *Lincoln*, one thousand two hundred.
- For the county of *Middlesex*, exclusive of the Tower division, commonly called *The Tower Hamlets*, one thousand six hundred.
- For the county of *Monmouth*, two hundred and forty.
- For the county of *Norfolk*, with the city and county of the city of *Norwich*, nine hundred and sixty.
- For the county of *Northampton*, six hundred and forty.
- For the county of *Northumberland*, with the town and county of the town of *Newcastle upon Tyne*, and the town of *Berwick*, five hundred and sixty.
- For the county of *Nottingham*, with the town and county of the town of *Nottingham*, four hundred and eighty.
- For the county of *Oxford*, five hundred and sixty.
- For the county of *Rutland*, one hundred and twenty.
- For the county of *Salop*, six hundred and forty.
- For the county of *Somerset*, eight hundred and forty.
- For the county of *Southampton*, with the town and county of the town of *Southampton*, nine hundred and sixty.
- For the county of *Stafford*, with the city and county of the city of *Litchfield*, five hundred and sixty.
- For the county of *Suffolk*, nine hundred and sixty.
- For the county of *Surry*, eight hundred.
- For the county of *Sussex*, eight hundred.
- For the county of *Warwick*, with the city and county of the city of *Coventry*, six hundred and forty.
- For the county of *Westmoreland*, two hundred and forty.
- For the county of *Worcester*, with the city and county of the city of *Worcester*, five hundred and sixty.
- For the county of *Wilts*, eight hundred.
- For the West Riding of the county of *York*, with the city and county of the city of *York*, one thousand two hundred and forty :
- For the North Riding of the said county, seven hundred and twenty :
- And for the East Riding of the said county, with the town and county of the town of *Kingston upon Hull*, four hundred.
- For the county of *Anglesea*, eighty.
- For the county of *Brecknock*, one hundred and sixty.
- For the county of *Cardigan*, one hundred and twenty.
- For the county of *Carmarthen*, with the county borough of *Carmarthen*, two hundred.

For the county of *Carnarvon*, eighty.

For the county of *Denbigh*, two hundred and eighty.

For the county of *Flint*, one hundred and twenty.

For the county of *Glamorgan*, three hundred and sixty.

For the county of *Merioneth*, eighty.

For the county of *Montgomery*, two hundred and forty.

For the county of *Pembroke*, with the town and county of the town of *Haverford West*, one hundred and sixty.

For the county of *Radnor*, one hundred and twenty.

Where the militia has not been raised, a general meeting is to be held by the lord lieutenant and two deputies; or, in the lord lieutenant's absence, by three deputies, on the second Tuesday in May annually; and on failure of meeting, then a meeting is to be held by summons and advertisement.

At their first general meeting, the subdivisions of the deputy lieutenants, and the times and places for their first meetings therein, are to be settled; and also a second general meeting appointed.

Orders to be then issued to the constables, to return lists of all persons within their

Secl. 42. " And be it enacted, That in all counties, ridings, and places, where the militia has not been raised, his majesty's lieutenant for every such county, riding, and place, together with any two or more deputy lieutenants, and, on the death or removal, or, in the absence of his majesty's lieutenant, any three or more deputy lieutenants, shall meet at some city or principal town of the county, riding, or place, for which they shall be commissioned, on the second *Tuesday* in *May* in every year; and if there should happen to be no such meeting on that day, then his majesty's said lieutenant, or, on his death or removal, or in his absence, any three or more deputy lieutenants, shall summon, or cause to be summoned, another meeting to be holden at the same city or principal town; on a day to be fixed by such summons; of which day and place notice shall be given in the *London Gazette*, and also in any weekly paper usually circulated (if any such there be) within the same county or riding, fourteen days at least before the holding of such meeting: and his majesty's said lieutenant, or, on his death or removal, or, in his absence, any three or more deputy lieutenants, shall, at their first general meeting, appoint subdivisions of the deputy lieutenants within their respective counties, ridings, and places, and the times and places for their first meetings within the said subdivisions respectively; and the time and place for a second general meeting; and shall issue out their orders to the chief constable, and, where there is no chief constable, to some other officer of the several hundreds, rapes, laths, wapentakes, or other divisions, within their respective counties, ridings, and places, to require, by orders under their hands, the constable, tythingman, headborough, or other officer of each parish, tything, or place, within their respective hundreds, rapes, laths, wapentakes, or other divisions, to return to the deputy lieutenants within their respective subdivisions, at the place and on the day appointed at the said first general meeting, fair and true lists, in writing, of the names of all the men usually, and, at that time, dwelling within their respective parishes, tythings, and places, between the ages of eighteen and forty-five years, distinguishing their respective ranks and occupations; and where the true names of such persons cannot be procured, the common appellation of such persons shall be sufficient; and which of the persons so returned labour under any infirmities, incapacitating them from serving as militia men; having first affixed a true copy of such list on the door of the church or chapel belonging to such parish, tything, or place, and if any place shall have no church or chapel belonging thereto, on the door;

door of the church or chapel of some parish or place thereto adjoining, on some *Sunday* morning before they shall make such return, which *Sunday* shall be three days at the least before the said meeting; and also notice in writing, at the bottom of such list, of the day and place of such meeting, and that all persons who shall think themselves aggrieved, may then appeal, and that no appeal will be afterwards received: and on the day and at the place so respectively appointed as aforesaid, for the returns of the lists, the constables, tythingmen, headboroughs, or other officers respectively, shall attend and verify the said return upon oath; and the said deputy lieutenants, or any three or more of them, or any two deputy lieutenants together with any one justice of the peace, or any one deputy lieutenant together with any two justices of the peace, so assembled in their subdivisions, shall (after hearing any person who shall think himself aggrieved by having his name inserted in such lists, or by any others being omitted) direct such lists to be amended as the case shall require, and also the names of all persons by this act respectively excepted, to be struck out of the said lists, and shall appoint the times and places for their second meetings within their respective subdivisions, and shall return to the second general meeting all the lists for the several parishes, tythings, and places, so amended: at which said second general meeting his majesty's lieutenant together with any two or more deputy lieutenants, and on the death or removal, or in the absence, of his majesty's lieutenant, any three or more deputy lieutenants, shall order copies to be made of all the said lists, and such copies to be returned to the deputy lieutenants at their second meetings within their subdivisions, wherein the parishes, tythings, and places, for which such lists are made and returned, are respectively situate; and shall appoint what number of men in each respective hundred, rape, lath, wapentake, or other division, shall serve in the said militia, towards raising the number of militia men by this act directed to be raised for such respective county, riding, or place, in proportion to the whole number contained in such lists: and the said deputy lieutenants, or any three or more of them, or any two deputy lieutenants together with any one justice of the peace, or any one deputy lieutenant together with any two justices of the peace, assembled at their said second meetings within the said subdivisions, shall appoint what number of men shall serve for each parish, tything, and place, or parishes, tythings, and places, in proportion to the number appointed at the second general meeting to serve for each hundred, rape, lath, wapentake, or other division; and, if a proper number of officers be then appointed, shall appoint another meeting to be held within three weeks in the same subdivision, and shall issue out an order to the chief constable, or other officer of the respective hundreds, rapes, laths, wapentakes, or other divisions, requiring them to give notice to the constable, tythingman, headborough, or other officer of each parish, tything, or place, or parishes, tythings, or places, within their respective hundreds, rapes, laths, wapentakes, or other divisions, of the number of men so appointed to serve for such respective parish, tything, or place, or parishes, tythings, or places, and

districts, between the ages of eighteen and forty-five years; distinguishing their respective ranks and occupations, &c.

Copy of the list to be affixed on the door of the church, on some Sunday, three days before the return is made, with notice of the day and place of meeting; that persons aggrieved may then appeal; after which no appeal will be received. Constables to attend the returns, and verify the same on oath. After the appeals are heard and settled, and persons excepted by the act struck out, the deputy lieutenants are to direct the lists to be amended; and appoint the times and places for their 2d subdivision meetings; and return the amended lists to the 2d general meeting; at which, copies of the lists are to be

of made out, to

be returned to of the time and place of the next subdivision meeting; and the said deputy lieutenant, or any three or more of them, or any two deputy lieutenants together with any one justice of the peace, or any one deputy lieutenant together with any two justices of the peace, assembled in pursuance of such appointment, shall cause the number of men appointed to serve as aforesaid, except as herein after excepted, to be chosen by lot out of the list or lists returned for such parish, tything, or place, or parishes, tythings, or places; and shall appoint another meeting to be held within three weeks in the same subdivision; and shall issue out an order to the chief constable, or other officers of the respective hundreds, rapes, laths, wapentakes, or other divisions, to direct the constable, tythingman, headborough, or other officer of each parish, tything, or place, to give notice to every man so chosen to serve in the militia, to appear at such meeting; which notice shall be given or left at his place of abode, at least seven days before such meeting; and such constable, tythingman, headborough, or other officer, shall attend such meeting, and make a return upon oath of the days when such notice was served; and every person so chosen by lot shall, upon such notice, appear at such meeting, and there take the following oath; that is to say,

Deputy lieutenants at their second subdivision meetings, are to appoint the number of men that shall serve in each parish, &c. in proportion to the number appointed for each hundred, &c. and if a proper number of officers be then appointed, another meeting is to be held within three weeks; and orders issued, for notice to be given to the constables of the number of men appointed to serve, and of the time and place of the next subdivision meeting; at which the men are to be chosen by lot out of the lists; and another meeting is to be appointed, and orders issued for giving timely notice to the persons chosen, then to appear; and the constables are to attend to avouch the notices; and the men to take the oath following.

I A. B. *do sincerely promise and swear, That I will be faithful and bear true allegiance to his majesty, king George, his heirs, and successors: and I do swear that I am a protestant, and that I will faithfully serve in the militia within the kingdom of Great Britain, for the defence of the same, during the time for which I am inrolled, unless I shall be sooner discharged.*

(Which oath any one deputy lieutenant is hereby authorized to administer) and shall be inrolled to serve in the militia of such respective county, riding, or place, as a private militia man, for the space of three years, in a roll to be then and there prepared for that purpose; or shall provide a fit person, to be approved by the said deputy lieutenants, or any three or more of them, or by any two deputy lieutenants together with any one justice of the peace, or by any one deputy lieutenant together with any two justices of the peace, then met, to serve as his substitute; which substitute so provided and approved, shall take the said oath, and sign on the said roll his consent to serve as his substitute during the said term: and if any person so chosen by lot to serve in the militia (not being one of the people called *Quakers*) shall refuse or neglect to appear and take the said oath, and serve in the militia, or to provide a substitute to be approved as aforesaid, who shall take the said oath, and sign his consent to serve as his substitute, every such person so refusing or neglecting shall forfeit and pay

and to be inrolled for three years, or provide fit substitutes, who shall take the said oath, and sign their consent to serve for the said term. Those who refuse to attend and be inrolled, or to provide fit substitutes, not being quakers, for-

pay the sum of ten pounds, and at the expiration of three years be liable feit 10l. and at the end of three years to serve again, or provide a substitute.

are liable to serve again, or provide a substitute.

Sett. 43. " And be it enacted, That no peer of this realm, nor any person who shall serve as a commission officer in any regiment, troop, or company, in his majesty's other forces, or in any one of his majesty's castles or forts; nor any non-commission officer or private man serving in any of his majesty's other forces; nor any commission officer serving, or who has served, four years in the militia; nor any person being a member of either of the universities; nor any clergyman; nor any licensed teacher of any separate congregation; nor any constable, or other such peace officer; nor any articulated clerk, apprentice, seaman, or seafaring man; nor any person mustered, trained, and doing duty, in any of his majesty's docks, for the service thereof; nor any person being free of the company of watermen of the river *Thames*; nor any poor man who has three children born in wedlock; shall be compelled to serve personally, or provide a substitute to serve in the militia. Specification of persons exempted from service in the militia by themselves or substitutes.

Sett. 44. " And be it enacted, That it may and shall be lawful for any three or more deputy lieutenants, or any two deputy lieutenants, together with any one justice of the peace, or any one deputy lieutenant together with any two justices of the peace, within their respective subdivisions, to add together, whensoever they shall think necessary, the lists for two or more parishes, tythings, or places, and proceed upon such lists, added together, in like manner as if they had been originally returned for one parish, tything, or place, so as to make the choice of militia men by lot, within such subdivision, as equal and impartial as possible. The lists for two or more parishes may be united by the deputy lieutenants, and proceeded upon as if originally returned for one parish.

Sett. 45. " And be it enacted, That if the churchwardens or overseers, or churchwarden or overseer, of any parish, tything, or place, or of two or more parishes, tythings, or places, so added together as aforesaid, shall, with the consent of the inhabitants of the parish or parishes, township or townships, hamlet or place, taken at a vestry, or at any other meeting for such parish, township, hamlet, or place, to be holden for that purpose, provide and produce to the said deputy lieutenants, or any three or more of them, or to any two deputy lieutenants together with any one justice of the peace, or to any one deputy lieutenant together with any two justices of the peace, at their meetings within their respective subdivisions for choosing the militia men by lot, any voluntier or voluntiers, and such voluntier or voluntiers shall be approved by the said deputy lieutenants and justices so met as aforesaid, they, or such of them as shall be approved, shall be then and there sworn in and inrolled; and the said deputy lieutenants and justices, within their respective subdivisions, shall cause only such a number of persons to be chosen by lot out of the list or lists returned for such parish, tything, or place, or parishes, tythings, or places, as aforesaid, as shall be then wanted to make up the whole number to serve for such parish, tything, or place, or parishes, tythings, or places, as aforesaid: and if such churchwarden or overseer, Churchwardens, &c. with consent of the vestry, may provide and tender voluntiers; and such of them as shall be approved, shall be then sworn in, and inrolled; and so many persons only shall be chosen out of the lists, as shall be then wanted to com-

pleat the number to serve for such parish.

Money paid to voluntiers for serving, to be reimbursed the churchwardens by a parochial rate :

Overplus of the rate to be applied to the poors rate.

The said rate may be levied by distress and sale ; but balloted persons who have served, or shall be serving, by themselves or by substitutes, are

or churchwardens or overseers, shall give to such voluntier or voluntiers any sum or sums of money to serve in the militia for such parish, tything, or place, or parishes, tythings, or places, it may and shall be lawful for such churchwarden or overseer, or churchwardens or overseers, to make a rate upon the inhabitants of such parish, tything, or place, or parishes, tythings, or places, by the rate they now use in making the rates for the relief of the poor ; which rate being approved by two justices of the peace, it may and shall be lawful for such churchwarden or overseer, or churchwardens or overseers, to collect such rate, and reimburse themselves such sum and sums of money as they shall have paid with the consent of the inhabitants of such parish or parishes, townships or places, assembled as aforesaid, to such voluntier or voluntiers as aforesaid ; and the overplus, if any, shall be applied as part of the poors rate : and if any person shall refuse to pay the sum of money he shall be so rated, it may and shall be lawful for any one justice of the peace, upon complaint thereof made by such churchwarden or overseer, or churchwardens or overseers, by warrant under his hand and seal, to levy the same by distress and sale of the offender's goods and chattels, rendering the overplus, if any, after the said rate, and the charges of such distress and sale, shall be paid ; but no balloted person who shall have served himself, or by substitute, three years, or who shall be then serving himself, or by substitute, in the militia, shall be liable to pay to such rates.

exempted from paying thereto.

Persons aggrieved by such rates may appeal.

The churchwardens are to pay within a month to the persons who shall be chosen by lot and inrolled, or shall provide fit substitutes, (if the regiment be then embodied) such sum not exceeding 5 l. as shall be adjudged one half of the current price paid for a voluntier ; the money to be paid out of the voluntier

Sett. 46. " Provided always, That it shall be lawful for any person who shall think himself or herself aggrieved by any such rate as aforesaid, to appeal to the next general quarter sessions, in like manner as is provided in the case of appeals against rates for the relief of the poor.

Sett. 47. " Provided always, and be it enacted by the authority aforesaid, That in case any person shall be chosen by lot to serve in the militia for any parish, tything, or place, or parishes, tythings, or places, and such person shall be sworn and inrolled, or shall provide a fit person to serve as his substitute who shall be sworn and inrolled, the churchwarden or overseer, or churchwardens or overseers, of such parish, tything, or place, or parishes, tythings, or places, shall, within one month after the time of such swearing or inrolling of the man so chosen by lot, or of the substitute respectively, pay to every such person so chosen by lot, if the regiment or battalion in which he, or his substitute, shall serve, shall be then embodied, any such sum of money not exceeding five pounds, as three deputy lieutenants, or two deputy lieutenants and one justice, or one deputy lieutenant and two justices, in whose presence such person shall be chosen by lot, shall adjudge to be, as near as may be, one half of the current price then paid for a voluntier in the county or riding where such person shall be so chosen by lot ; which said sum of money shall be taken out of the rate to be made as aforesaid for providing and producing voluntiers ; or, in case no voluntiers shall be provided or produced by the churchwardens or overseers, or churchwarden or overseer,

of

of any parish, tything, or place, or parishes, tythings, or places, then rate, or a rate out of a rate to be made by the rule aforesaid. made for that purpose.

Secl. 48. " Provided nevertheless, That if such man so chosen by lot, and serving for himself, shall within one month after his inrolment, be disapproved of and discharged by the officer commanding the regiment or battalion, no such sum shall be paid to the person so chosen by lot, but shall be paid, in manner aforesaid, to the next person chosen by lot in his stead; and if the substitute he shall have found be disapproved in manner aforesaid, then no such sum to be paid to the man so chosen by lot, in manner aforesaid, unless he shall serve himself, or shall find another substitute. If the person chosen by lot and inrolled, shall be disapproved of, and discharged within the month, the money shall not be paid to him, but to

the next person chosen in his stead; and the same rule is to be observed in the case of substitutes;

Secl. 49. " Provided always, That no person so chosen by lot as aforesaid, shall be intitled to one half of the said current price of a volunteer, without the order of the persons aforesaid, before whom the said person chosen by lot, expressed under their hands. and no money is to be paid on that head, but by an order of

the deputy lieutenants before whom the persons were chosen.

Secl. 50. " And be it enacted; That if any servant hired by the year, or otherwise, shall serve in the militia, it shall and may be lawful for one justice of the peace, upon complaint made to him on oath by such servant, to order so much of his wages, as shall appear to such justice to be due to such servant, to be immediately paid him by his master or employer, in proportion to the service he has performed, under the contract or agreement made between them at the time such servant was hired; and the said justice shall proceed therein in the same manner as is directed by an act passed in the twentieth year of the reign of his late majesty, intituled, *An act for the better adjusting and more easy recovery of the wages of certain servants; and for the better regulation of such servants, and of certain apprentices.* Hired servants serving in the militia, upon application to a justice, shall recover the wages then due to them. Justice to proceed therein as directed by act 20 Geo. 2.

Secl. 51. " Provided always, and it is hereby enacted, That from and after the passing this act, it shall not be lawful for any person or persons whatsoever (other than such churchwardens and overseers as aforesaid, for the purposes aforesaid) to contract, undertake, or agree with any person or persons, for any sum or sums of money, or any other consideration or reward, to indemnify or insure any person or persons liable to serve in the militia, against serving therein, or in like manner to contract, undertake, or agree, to provide a substitute or substitutes for any person or persons who may be chosen by lot to serve in the militia, or to pay the penalty of ten pounds by this act laid upon any person chosen by lot to serve in the militia, and who shall refuse or neglect to appear, and take the oath, and to serve in the militia, or to provide a substitute; and if any person shall offend herein, every such person shall, for every such contract, undertaking, or agreement, forfeit and pay the sum of one hundred pounds, to be recovered in any of his majesty's courts of record, by action of debt, bill, plaint, or information, wherein no essoin, protection, wager of law, or more than one imparlance, shall be allowed; None but churchwardens and overseers may make any pecuniary contract to indemnify or insure persons from serving in the militia, or to provide substitutes, or pay the 10 l. in lieu thereof; on penalty of forfeiting 100 l. One moiety thereof to go to the prosecutor, and the

other to the poor of the parish, and the contract to be void.

one moiety of which penalty shall be applied to the use of the prosecutor, and the other moiety to the use of the poor of the parish wherein the offence shall be committed; and every such contract, undertaking, or agreement, is hereby declared to be absolutely null and void, to all intents and purposes whatsoever.

The above clause not to prevent persons chosen by lot from procuring substitutes for themselves;

Sec. 52. " Provided, That nothing herein before contained, shall extend to prevent any person who shall have been actually chosen by lot to serve in the militia, from procuring, by himself or others, a proper person to serve as his substitute.

nor persons of the same, or neighbouring parishes, from subscribing towards paying jointly for substitutes, in the room of such of them as shall be chosen by lot.

Sec. 53. " Provided also, That nothing in this act shall extend to prevent persons of the same parish, township, tything, or place, or of two or more parishes, tythings, or places, added, or which may be added together, for the purposes of this act, from entering into subscriptions among themselves, for paying jointly for any substitute or substitutes who may be provided for any one or more of the subscribing persons, on whom the lot may fall.

Hired volunteer or substitute inlisting in the army, such inlisting is declared void, unless the money be returned to the overseers of the parish, which is to be laid out by them in providing another fit person; and if the sum be insufficient, they are to be reimbursed the additional expence by a rate, and account for the surplus; and such hired volunteer or substitute so inlisting, not informing the officer of his being in the militia, is to be committed to the house of correction not exceeding three months.

Sec. 54. " And be it enacted, That if any person sworn and inrolled to serve in the militia as volunteer or substitute, shall have received any sum of money from any person whatsoever for such service, and shall be inlisted to serve in his majesty's other forces, such inlisting shall be, and the same is hereby declared to be null and void, until the said militia man, or the officer with whom he shall inlist, shall have paid to the overseer or overseers of the parish or place, parishes or places, for which the said militia man served, the full sum he received for such his service; which sum shall be laid out by such overseer or overseers, in or towards the providing another fit person to serve in the militia, for the space of three years, in the place of the militia man so inlisted into his majesty's other forces: and in case the money so received shall not be sufficient to provide another fit person to serve as aforesaid, such overseer or overseers shall be reimbursed such further sum of money as he shall pay for providing such other fit person, in the same manner as is directed by this act upon the providing of volunteers: and in case the money so received shall exceed the sum expended in providing such fit person as aforesaid, the surplus shall be accounted for by such overseer or overseers, as so much money in his or their hands for the purposes of providing volunteers for such parish or parishes, place or places: and in case such militia man shall not, at the time of his inlisting, inform the officer with whom he inlists, that he is a militia man, and for what parish, tything, or place, or parishes, tythings, or places, he serves, and shall be thereof convicted upon oath, before any one justice of the peace, it may and shall be lawful for such justice, and he is hereby required, by warrant under his hand and seal, to commit such militia man to the house of correction for any time not exceeding three months.

to be committed to the house of correction not exceeding three months.

Señ. 55. “ And be it enacted, That if any serjeant, drummer, or fifer, serving in the militia, shall, in any city, town, or place, beat up for voluntiers to serve in the militia, the person who shall give such serjeant, drummer, or fifer, orders for so doing, shall upon proof of such beating up and such orders given, upon oath, before any justice of the peace, forfeit and pay the sum of twenty pounds; one moiety whereof shall be applied to the use of the person who shall make information thereof before any justice of the peace of such beating up for voluntiers, and the other moiety shall be applied as part of the stock belonging to the regiment or battalion to which such serjeant, drummer, or fifer shall belong: and if such serjeant, drummer, or fifer, shall refuse to declare, upon oath, before such justice, from whom he received such orders, it may and shall be lawful for such justice, and he is hereby required, by warrant under his hand and seal, to commit such serjeant, drummer, or fifer, to the house of correction, for any time not exceeding three months. gave such orders, is to be committed to the house of correction not exceeding

Serjeant, drummer, or fifer, beating up for voluntiers for the militia, the person who gave the orders forfeits 20l. One moiety to the informer, and the other to the regimental stock; and the serjeant, &c. not declaring who

Señ. 56. “ And be it further enacted and declared, That no officer or non-commission officer in the militia shall, during the time the regiment, battalion, or independent company, in which he serves, shall be out of the county, riding, or place, to which they belong, engage any person to serve as a militia man in such regiment, battalion, or independent company, unless such person so engaged shall be a native of the county to which the said regiment, battalion, or independent company belongs. While the militia is out of its proper county, no person may be engaged to serve therein, who is not of the county to which such regiment belongs.

Señ. 57. “ And be it enacted, That in the several counties, ridings, and places, where the militia has been or shall be raised, his majesty's lieutenant of every such county, riding, and place, together with any two or more deputy lieutenants, and on the death or removal, or in the absence, of his majesty's lieutenant, any three or more deputy lieutenants, shall meet annually on the last *Tuesday* in *May*, or on the last *Tuesday* in *October*, as they shall think most convenient for the due execution of this act; and shall appoint the times and places for holding four or more subdivision meetings of deputy lieutenants and justices of the peace in every year; and shall cause new lists in the several parishes, tythings, and places, to be made and returned to the deputy lieutenants and justices of the peace at the first of the said subdivision meetings, in the same manner as lists are herein before directed to be made and returned in counties, ridings, and places, where the militia has not been raised. A general meeting of the lord lieutenant and deputies, to be held annually on the last Tuesday in May, or October, as shall be adjudged most convenient; and the times and places to be then appointed for holding four or more subdivision meetings, and for the returns of the new lists to the first of those meetings.

Señ. 58. “ And be it enacted, That if the list of any parish, tything, or place, shall be lost or destroyed, it may and shall be lawful for any three deputy lieutenants, or any two deputy lieutenants together with any one justice of the peace, or any one deputy lieutenant together with any two justices of the peace, in their subdivisions, to cause a new list in such parish, tything or place, to be made, and returned to them at their next subdivision meeting, in the same manner as the list lost or destroyed was Where any list shall be lost or destroyed, the dep. lieutenants are to order new ones to be made and re-caused

turned to their next subdivision meeting. caused to be made and returned to them by direction of the general meeting of lieutenants and deputy lieutenants.

Sec. 59. "And be it enacted, That the said deputy lieutenants, or any three or more of them, or any two deputy lieutenants together with any one justice of the peace, or any one deputy lieutenant together with any two justices of the peace, shall meet in their several subdivisions at the times appointed at the general meetings of his majesty's lieutenant and deputy lieutenants: and if any private militia man shall shew just cause for his discharge, and, being embodied, shall likewise produce a regular discharge from his commanding officer, the said deputy lieutenants, or any three or more of them, or any two deputy lieutenants together with any one justice of the peace, or any one deputy lieutenant together with any two justices of the peace, shall and may, at such subdivision meetings, discharge such person from serving in the militia; and in the stead of the persons so discharged, and also if there should be any other vacancy by death or otherwise, such deputy lieutenants, or any three or more of them, or any two deputy lieutenants together with any one justice of the peace, or any one deputy lieutenant together with any two justices of the peace, shall, after having amended the lists in the same manner as the deputy lieutenants and justices, in their subdivisions, are to amend the lists in the several counties where the militia has not been raised, cause a like number of other persons to be chosen by lot out of the lists of such parishes, tythings, or places, where such vacancies shall happen, unless such number of persons shall be otherwise provided as is by this act directed; which persons so chosen, or their substitutes provided and approved as aforesaid, shall take the oath required by this act to be taken: and every person so chosen shall be inrolled, and every substitute so provided shall subscribe his consent to serve, and shall serve in the said militia for the space of three years, subject to the directions, provisions, and penalties in this act contained. shall be otherwise provided; and the persons so chosen or their substitutes are to be inrolled for three years.

Sec. 60. "Provided nevertheless, That it shall and may be lawful for any three deputy lieutenants, or any two deputy lieutenants, together with any one justice of the peace, or any one deputy lieutenant together with any two justices of the peace, upon any vacancy or vacancies in the militia, by death or otherwise, to appoint a subdivision meeting for the filling up such vacancy or vacancies, giving seven days notice thereof.

Sec. 61. "And be it enacted, That when any substitute shall, after having been approved by any three deputy lieutenants, or by any two deputy lieutenants together with any one justice of the peace, or by any one deputy lieutenant together with any two justices of the peace, and before the expiration of the term for which he was to serve, die, or be appointed a serjeant in the militia, or be legally discharged, the person for whom he served as substitute shall not be obliged to serve himself, or to find another substitute; but such vacancy shall be filled up in like manner as in cases of death, or discharge of per-

manner as is directed by this act, in case of vacancies occasioned by the death or discharge of persons serving for themselves.

Seet. 62. " And be it enacted, That for the purpose of swearing and inrolling men to serve in the militia, it shall and may be lawful for any one deputy lieutenant, at any place in the subdivision he usually acts in, to swear and inrol any substitute to serve for any place in such his subdivision; provided such substitute shall produce to such deputy lieutenant a certificate under the hands and seals of any two other deputy lieutenants, or of any one justice of the peace together with any one deputy lieutenant, or of any two justices of the peace acting in the same subdivision, or residing near the same, certifying they have seen, and do approve of, such substitute as a proper person to serve in the militia, and such person shall and may be sworn and inrolled by such deputy lieutenant only: provided nevertheless, That the clerk belonging to such subdivision shall and do attend with the roll at such swearing and inrolling.

sons serving for themselves.
Substitute may be sworn in and inrolled before a deputy lieutenant in his subdivision, on producing a certificate of his having been seen and approved of by two deputy lieutenants, &c. and the clerk of the subdivision meeting attending with the roll at the time.

Seet. 63. " Provided always, and be it further enacted, That if any militia man shall, during the time that the regiment or battalion in which he serves shall be embodied, be discharged by the officer commanding such regiment or battalion, such discharge shall be sufficient to prevent such man from being liable to be apprehended as a deserter, but shall not extend to cause another man to be chosen to serve for the parish, tything, or place, or parishes, tythings, or places, for which such man so discharged did serve, unless he be likewise regularly discharged by the deputy lieutenant or deputy lieutenants and justices of the peace as aforesaid.

Militia man embodied, and discharged by the commanding officer, is not liable to be apprehended as a deserter; nor shall another be chosen in his room, unless

he be discharged also by the deputy lieutenants.

Seet. 64. " And be it further enacted, That all such militia men whose time of service in the militia shall be near expiring, during the time the regiment, battalion, or independent company, in which they served, shall be absent from the county, riding, or place to which they belong, shall be returned by the commanding officer of such regiment, battalion, or independent company, to the county, riding, or place, for which they served, so as that they may reach the said county by the expiration of their term.

Militia men, whose time of service shall be near expiring, are to be returned to their proper county, so as they may reach the

same by the expiration of their term.

Seet. 65. " And be it further enacted, That it shall and may be lawful for his majesty's lieutenant together with any two or more deputy lieutenants, and on the death or removal, or, in the absence of his majesty's lieutenant, for any three or more deputy lieutenants, at a general meeting to be held after reasonable notice thereof given, to change or alter any subdivision meeting or meetings, whenever they shall find it convenient so to do.

Subdivision meetings may be altered at a general meeting, held after reasonable notice;

Seet. 66. " And be it further enacted, That, in order to save the trouble of appointing subdivision meetings every year in the several counties, ridings, and places aforesaid, the several subdivision meetings therein now appointed, but the subdivision meetings already appointed, to remain un-

til they shall be by a general meeting altered.

Removal of a private man into another parish, &c. the militia whereof serves in the same regiment, does not alter his service, nor occasion a vacancy in his former parish; but if the removal be into another county, &c. the militia whereof serves in different regiments, he shall serve his time out in the regiment of that place, upon the first vacancy; and he is to give previous notice of his removal to the deputy lieutenants, and receive a certificate of his service; and if given by one deputy lieutenant, is to be certified to the next subdivision meeting; and the certificate itself to be produced at the subdivision meeting for the

appointed, shall remain and continue until the same shall be altered by his majesty's lieutenant together with any two or more deputy lieutenants, or, on the death or removal, or, in the absence of his majesty's lieutenant, by any three or more deputy lieutenants, at some general meeting.

Sec. 67. " And be it enacted, That every militia man shall, if he changes the place of his abode from one parish, tything, or place, to another parish, tything, or place, the militia whereof shall serve in the same regiment or battalion, such militia man shall continue to serve in such regiment or battalion for the place from whence he removed, and shall not occasion a vacancy, for such parish, tything, or place, but shall be trained, exercised, and paid, by the officer of the company to which the militia of such parish, tything, or place, to which he removed shall belong; and that every militia man, who shall change the place of his abode from one county to another county, or from one parish, tything, or place, to another parish, tything, or place, the militia whereof shall serve in different regiments or battalions, such person shall serve, upon the first vacancy that shall happen, in such regiment or battalion, until his service shall be compleated: and every such militia man shall, before he changes the place of his abode, give notice thereof to any three or more deputy lieutenants, or to any two deputy lieutenants together with any one justice of the peace, or to any one deputy lieutenant together with any two justices of the peace, at some division meeting, or to one deputy lieutenant, who shall give to such militia man a certificate of the time he shall have served in the militia for the respective parish, tything, or place, from his enrolment to serve in the same; and if such certificate shall have been given by one deputy lieutenant only, such deputy lieutenant shall certify the same to the deputy lieutenants and justices of the peace at their next meeting within such subdivision, and such militia man shall produce the said certificate to the deputy lieutenants and justices at the next meeting for the subdivision wherein he shall then dwell, or to one deputy lieutenant residing near the parish, tything, or place, to which he shall remove, who shall certify the same to the deputy lieutenants and justices of the peace, at their next subdivision meeting: and if any militia man so changing the place of his abode shall not give notice, and thereof convicted on oath before one or more justice or justices of the peace, shall forfeit and pay the sum of twenty shillings: and if such offender shall not immediately pay such penalty, the same shall be levied by distress and sale of his goods and chattels, by warrant under the hand and seal, or hands and seals, of such justice or justices, rendering the overplus, (if any) on demand, after deducting the charges of such distress and sale, to such offender upon whom such distress shall have been made, as aforesaid; and for want of sufficient distress, such justice or justices shall commit such offender to the house of correction for any time not exceeding one month.

place to which he shall remove. On neglect of giving such notice, and producing certificate, he forfeits 20 s. to be levied by distress and sale; and for want of distress, he is to be committed not exceeding one month.

Sec.

Señ. 68. " And be it enacted, That the clerk of the subdivision meeting shall, upon notice given by any militia man of the changing of his place of abode, and of a certificate granted him as aforesaid, forthwith give notice thereof to the clerk of the meeting for the subdivision to which the parish, tything, or place, where he then resides shall belong. Clerk of the subdivision meeting is to give notice of such militia man's change of abode, &c. to the clerk for the division to which he shall remove.

Señ. 69. " Provided always, That no militia man having served as a substitute, shall, by such service, be excused from serving for himself when he shall be chosen by lot. No substitute is to be excused from serving for himself when chosen.

Señ. 70. " And be it enacted, That the clerks of the subdivision meetings, shall, within fourteen days after each subdivision meeting, transmit to his majesty's lieutenant of the county, riding, or place, fair and true copies of the rolls signed at the said meetings. Copies of the rolls signed at the subdivision meetings to be transmitted to the lord lieutenant in fourteen days after each meeting.

Señ. 71. " And be it enacted, That if any chief constable or other officer of any hundred, rape, lath, wapentake, or other division, or any constable, tythingman, headborough, or other officer of any parish, tything, or place, shall refuse or neglect to return such lists, from time to time, in manner aforesaid, or to comply with such orders and directions as he shall, from time to time, receive from his majesty's lieutenant, and the said deputy lieutenants, or any three or more of them, or any two deputy lieutenants together with any one justice of the peace, or any one deputy lieutenant together with any two justices of the peace, in pursuance of this act, or shall, in making such return, be guilty of any fraud or wilful partiality; any three or more deputy lieutenants, or any two deputy lieutenants together with any one justice of the peace, or any one deputy lieutenant together with any two justices of the peace, are hereby impowered and required to imprison, in the common gaol of the respective county, riding, or place, such chief constable or other officer of any hundred, rape, lath, wapentake, or other division, or such constable, tythingman, headborough, or other officer of any parish, tything, or place, there to be kept, without bail or mainprize, for the space of one month, or, at their discretion, to fine such officer in any sum not exceeding five pounds, nor under forty shillings; such fine to be levied by distress and sale of the offender's goods and chattels, by warrant under the hands and seals of any three or more deputy lieutenants, or of any two deputy lieutenants together with any one justice of the peace, or of any one deputy lieutenant together with any two justices of the peace; rendering the overplus (if any) on demand, after deducting the charges of such distress and sale, to such officer upon whom such distress shall have been made as aforesaid: and it shall and may be lawful for the deputy lieutenants, or any three or more of them, or any two deputy lieutenants together with any one justice of the peace, or any one deputy lieutenant together with any two justices of the peace, within their respective subdivisions, from time to time, to fine not exceeding 5l. nor less than 40s. to be levied by distress and sale. Constables or other officers neglecting to return the lists, or comply with their orders, or being guilty of fraud or partiality in their returns, to be imprisoned for one month, or fined not exceeding 5l. nor less than 40s. to be levied by distress and sale. Dep. lieutenants may issue their order, commanding the occasional at-

attendance of the constable, or other parish officer; and on his disobeying such order, may fine or imprison him.

time to time, to issue out their order or warrant, under their hands and seals, commanding the attendance of the constable, tythingman, headborough, or other officer of any parish, tything, or place, within their several subdivisions, at such times and places as in such order or warrant shall be expressed; and if such constable, tythingman, headborough, or other officer, shall refuse or neglect to appear according to such order or warrant, such constable, tythingman, headborough, or other officer, shall suffer the pains and penalties aforesaid.

Persons tampering with the constables to make false returns, or to erase, &c. the name of any person out of the lists, forfeit 50*l.* to the prosecutor; and persons refusing to declare their own names, or those of their lodgers, &c. forfeit 10*l.*

Sec. 72. “ And be it enacted, That any person who shall, by gratuity, gift, or reward, or by promise thereof, or of any indemnification, or by menaces, endeavour to prevail on any chief constable, or any constable, tythingman, headborough, or other officer, of any parish, tything, or place, to make a false return of any list for any parish, tything, or place, or to erase or leave out of any such list the name of any such person as ought to be returned, every such person shall, for every such offence, forfeit and pay the sum of fifty pounds, to be recovered by action of debt, bill, plaint, or information, in any of his majesty’s courts of record at *Westminster*, wherein no essoin, wager of law, or protection, or more than one imparlance, shall be allowed; all which penalties shall go to the use of the person or persons who shall sue for the same: and if any person shall refuse to tell his christian and surname, or the christian and surname of any man lodging or residing within his or her house, to any constable, tythingman, or other officer, authorized by this act to demand the same, every such person shall forfeit and pay the sum of ten pounds.

Deputy lieutenants being informed of, or suspecting, the fraudulent binding out of persons returned in the list as apprentices, in order to avoid serving, may summon and examine witnesses upon oath touching the same; and if any fraud shall appear, they are to appoint such person to serve immediately, or upon the first vacancy that shall happen; and the master to whom

Sec. 73. “ And be it enacted, That if any three or more deputy lieutenants, or any two deputy lieutenants together with any one justice of the peace, or any one deputy lieutenant together with any two justices of the peace, shall, at any of their subdivision meetings, receive information, or shall suspect, that any person inserted in any list, described as an apprentice, has been fraudulently bound apprentice in order to avoid serving in the militia, it may and shall be lawful for any three or more deputy lieutenants, or any two deputy lieutenants together with any one justice of the peace, or any one deputy lieutenant together with any two justices of the peace, to make inquiry into the binding out such person apprentice, and to summon such persons as they shall think necessary to appear before them, at such time and place as they shall appoint, and to examine such persons, upon oath, touching the matter in question: and in case any such fraud shall appear in the binding out such person apprentice, it may and shall be lawful for such deputy lieutenants, or deputy lieutenants and justice, or deputy lieutenant and justices, to appoint such person, so bound apprentice, to serve immediately in the militia for the parish, tything, or place, for which such list shall have been returned, if there shall be a vacancy; and if there shall be no vacancy at that time, then upon the first vacancy that shall happen therein: and the person to whom such apprentice shall be so bound, shall forfeit and pay the sum of ten pounds; which penalty, in case the same shall not be forthwith paid, shall be levied by distress and sale of the offender’s goods and

and chattels, by warrant under the hands and seals of such deputy lieutenants, or deputy lieutenants and justice, or deputy lieutenant and justices, or any three or more of them, returning the overplus, if any, after all charges paid, to the person whose goods and chattels shall be so distrained; one moiety whereof shall be applied to the use of the informer, if any, and the other moiety, or, if there shall be no informer, then the whole of such penalty, shall be applied in manner herein after-mentioned.

Sec. 74. "And be it enacted that his majesty's lieutenant of every county, riding, and place, shall, and he is hereby required to transmit to his majesty's privy council, from time to time, a true state of the numbers of persons fit to serve in the militia for the county, riding, or place, of which he is lieutenant; and that after all the said numbers shall be transmitted to his majesty's privy council, according to the directions aforesaid, it may and shall be lawful for the said council, and they are hereby required to fix and settle, as near as may be, the number of private militia men who shall for the future serve for each county, riding, or place, within the part of *Great Britain* aforesaid, by the proportion which the numbers returned for each county, riding, or place, bear to the whole number of private militia men by this act directed to be raised within the part of *Great Britain* aforesaid, and forthwith to transmit accounts of the numbers so fixed and settled, to all his majesty's lieutenants of counties, ridings, and places, within the part of *Great Britain* aforesaid, respectively; and where the number of private militia men so fixed and settled as aforesaid, shall be respectively greater than the number of private militia men who shall be by virtue of this act appointed to serve for any county, riding, or place, then, and in such case, his majesty's lieutenant together with any two or more deputy lieutenants, and on the death or removal, or in the absence of his majesty's lieutenant, any three or more deputy lieutenants, shall, at a general meeting to be held for that purpose, appoint what number of private militia men shall serve for each respective hundred, rape, lath, wapentake, or other division, within the county, riding, or place, to which they belong; and the additional number of private militia men to make up the whole number so fixed and settled as aforesaid, shall be provided or chosen in the same manner as all other private militia men are by this act directed to be provided or chosen: and all the additional men so provided or chosen, or their substitutes (to be appointed as substitutes are required to be by this act) and voluntiers, shall take the oath by this act required to be taken, and shall respectively be inrolled, or sign their consent to serve in the militia, in the same manner as is directed, and shall be subject, in case of refusal, to the same penalties as are in like cases inflicted by this act: and where the number of private militia men so fixed and settled as aforesaid, shall be respectively less than the number of private militia men who shall be, by virtue of this act, appointed to serve for any county, riding, or place, then, and in such case, his majesty's lieutenant together with any two or more deputy lieutenants, and on the death or removal, or in the absence of his majesty's lieutenant, any three or more

such person was so bound shall forfeit 10 l. to be levied by distress and sale: One moiety thereof to go to the informer, if any.

Lord lieutenant is to transmit, from time to time, to the privy council, a state of the numbers of persons in the county fit to serve; and the privy council is thereupon to settle the quota of men to serve, by the proportion the returns for each county bear to the whole number to be raised within the kingdom; and are forthwith to transmit accounts of the numbers so settled to the lord lieutenants: and where the number shall be greater than is appointed by the act, a general meeting is to be held by the lord lieutenant and deputies, and the additional men are to be then provided or chosen in

like manner as is directed in other cases; and where the number settled shall be less than is appointed by the act, the supernumeraries shall be discharged by lot.

Where the numbers to be raised shall appear at a general meeting to have been unequally or erroneously apportioned amongst the several hundreds or divisions of the county; or that by alteration of circumstances the same is become unequal, &c. the lord lieutenant and deputies may make a new and more equal distribution; and raise and discharge men conformable thereto.

Sec. 75. “ And be it enacted, That in case it shall at any time appear to his majesty’s lieutenant and any two or more deputy lieutenants, or on the death or removal, or in the absence of his majesty’s lieutenant, to any three or more deputy lieutenants, of any county, riding, or place, at their general meeting, that the distribution by them made of the whole number of militia men, charged upon such county, riding, or place, among the several hundreds, rapes, laths, wapentakes, or other divisions, was either unequally and erroneously made, or, from any subsequent alteration of circumstances, is become unequal and disproportionable, it may and shall be lawful for his majesty’s said lieutenant and any two or more deputy lieutenants, or on the death or removal, or in the absence, of his majesty’s lieutenant, for any three or more deputy lieutenants, to make a new and more equal distribution of such number as aforesaid among the said several hundreds, rapes, laths, wapentakes, or other divisions, according to the method prescribed by this act for making the original distribution, and to cause such additional number of men to be provided or chosen, or such number to be discharged out of those before provided or chosen for each respective hundred, rape, lath, wapentake, or other division, as shall become necessary in consequence of such new distribution, in like manner as is by this act prescribed to be done, where the same shall become necessary in consequence of the accounts transmitted from his majesty’s privy council.

Serjeant and militia man exempted from statute-work and parish offices; and from being obliged to serve in his majesty’s land or sea forces.

Sec. 76. “ And be it enacted, That no serjeant or private man serving in the militia shall, during the time of such service, be liable to do personally any highway duty, commonly called *Statute work*, or be appointed to serve as a peace officer or parish officer, or be liable to serve in any of his majesty’s land or sea forces, unless he shall consent thereto.

Militia man falling sick on a march, or at the place of annual exercise, is to be provided for by an order from the magistrate, or justice of the place; and the expence is to be reimbursed by his proper parish.

Sec. 77. “ And be it enacted, That in case any private man serving in the militia, shall on the march, or at the place where he shall be called out to annual exercise, be disabled by sickness, it shall and may be lawful for any one justice of the peace of the county, or any mayor or chief magistrate of any city, town, or place, where such man shall then be, to order him such relief as he shall think reasonable, by warrant under his hand and seal: and the officers of the parish, tything, or place, for which such man shall serve as a militia man, shall reimburse the same to the officers of the parish where such militia man shall then receive such relief, which shall be allowed in their accounts, upon producing the above order.

Seet. 78. " And be it enacted, That no person having served personally or by substitute three years in the militia, shall be obliged to serve again, until by rotation it comes to his turn. No person having served three years, is liable to serve again but in rotation.

Seet. 79. " And be it enacted, That every man having served in the militia when drawn out and embodied, being a married man, may set up and exercise any such trade as he is apt and able for, in any town or place within the kingdoms of *Great Britain* and *Ireland*, without any let, suit, or molestation, of any person or persons whatsoever, for or by reason of the using such trade, as freely, and with the same provisions, and under the same regulations, and with the like exception in respect to the two universities of that part of *Great Britain* called *England*, as any mariner or soldier may do by an act passed in the twenty second year of his late majesty's reign, intituled, *An act to enable such officers, mariners, and soldiers, as have been in his majesty's service since his accession to the throne, to exercise trades.* The same liberty is granted to militia men being married and embodied, to set up trades within Great Britain or Ireland, as by act 22 Geo. 2. is granted to mariners or soldiers.

Seet. 80. " And be it enacted, That no private militia man shall be intituled to his clothes for his own use, until he shall have served for the space of three years, if the regiment or battalion in which he serves shall be unembodied; but if such regiment or battalion in which he serves shall be drawn out and embodied, the clothes shall, at the end of one year, be applied in such manner as the colonel or commanding officer of his regiment or battalion shall judge best for the use of such militia man. Militia man, if unembodied, is not intituled to his clothes, till he has served three years; but if embodied, they are to be applied to his use at the end of one year.

Seet. 81. " And be it enacted, That if any militia man who shall have been accepted and inrolled as a substitute, hired man, or voluntier, before the twenty-second day of *May* one thousand seven hundred and sixty, or if any militia man who shall have been chosen by lot, whether before or after the twenty-second day of *May*, one thousand seven hundred and sixty, shall, when embodied, and called out into actual service, and ordered to march, leave a family unable to support themselves, the overseer or overseers of the poor of the parish, tything, or township, where the family of such militia man shall dwell, shall, by order of some one justice of the peace, out of the rates for the relief of the poor of such parish, tything, or township, pay to such family a weekly allowance, according to the usual and ordinary price of labour in husbandry within the said county, riding, division, district, or place, where such family shall dwell, by the following rule; that is to say, for one child under the age of ten years, any sum not exceeding the price of one day's labour; for two children under the age aforesaid, any sum not exceeding the price of two days labour; for three or four children under the age aforesaid, any sum not exceeding the price of three days labour; for five or more children under the age aforesaid, any sum not exceeding the price of four days labour; and for the wife of such militia man, any sum not exceeding the price of one day's labour; and in every parish, tything, or township, where the money arising by such rates shall not be sufficient for the purpose aforesaid, a new Overseers are to pay out of the poor rates, by order of some justice, a weekly allowance to the distressed families of such men embodied and called out, as shall have been chosen by lot, and of such substitutes, hired men, and voluntiers, as were inrolled before 22 May, 1763, according to the usual price of labour in husbandry within

the county, rate or rates shall be made for raising a sum sufficient for that purpose: and the number and age of the children: viz. for 1 child under 10 years, 1 day's labour; 2 ditto, 2 day's labour; 3 or 4 ditto, 3 day's labour; 5 or more ditto, 4 day's labour: for the wife 1 day's labour: and where the said rates shall be insufficient, a new rate is to be made; and the overseers are to be reimbursed forthwith out of the county stock.

Treasurer of the county is to keep an account of the monies so reimbursed to the overseers, and return half-yearly the said accounts with those received from the city treasurer, &c. into the Exchequer.

Señ. 82. " And be it enacted, That the treasurer of every county, riding, division, and place, shall and is hereby required to keep exact and distinct accounts of all the monies that shall have been so by him reimbursed, to such overseer or overseers as aforesaid, in pursuance of the directions of this act: and shall at the end of seven calendar months from the passing of this act, and afterwards at the end of every six calendar months, return the said accounts, together with the accounts which he shall have received from the several treasurers of the cities, towns, liberties, or places, to the office of the treasurer's remembrancer of the court of Exchequer.

Where any city or place shall not be liable by act 12 Geo. 2. to contribute to county rates, the justices may appoint a treasurer, and assess each parish, proportionate to their usual poor rate, in a sum sufficient to reimburse the overseers the weekly allowances paid by them; and such treasurer is to reimburse the said overseers, and keep an account of the monies paid by him, and transmit the same half-yearly to the

Señ. 83. " Provided always, and be it enacted, That in all cities, towns, liberties, divisions, and places, which are not liable to contribute to county rates by virtue of an act made in the twelfth year of his late majesty's reign, intituled, *An act for the more easy assessing, collecting, and levying of county rates*, the justices of the peace for every such city, town, liberty, division, and place, at any sessions or meeting, or the major part of them then and there assembled, may and shall appoint a treasurer, and shall assess upon every parish, tything, township, hamlet, or vill, within the limits of their respective jurisdictions, in such proportions as the rates heretofore made for the relief of the poor have been usually assessed; and shall cause to be paid out of the money collected and levied for the relief of the poor of every such parish, tything, township, hamlet, or vill, into the hands of such treasurer, such sum or sums of money as they in their discretion shall think sufficient for reimbursing to the overseer or overseers of the several parishes, thythings, townships, hamlets, or vills, within the limits of their respective jurisdictions, the amount of the weekly allowances paid by such overseer or overseers to the families of the militia men residing within their respective jurisdictions as aforesaid; and every such treasurer shall forthwith reimburse the same to every such overseer or overseers accordingly: and such treasurer is hereby required to keep exact and distinct accounts of all the monies that shall have been so paid into his hands, and so by him reimbursed to such overseer or overseers as aforesaid: and shall, at the end of every six calendar months, transmit the said accounts to the treasurer of the county or riding which such city, town, liberty, division, and place, is, by this act, united with and made part of for the purposes of this act: provided that the treasurer of the city of

Lincoln

Lincoln and county of the said city, shall transmit his accounts to the treasurer of the division of *Linsey*, within the county of *Lincoln*.

city of *Lincoln* is to transmit his accounts to the treasurer of *Linsey* division.

Sec. 84. " Provided always, and be it enacted, That within the city and county of the city of *Exeter*, all allowances to be made by virtue of this act to the families of persons serving in the militia, shall be paid by the treasurer or treasurers of the corporation of the governor, deputy governor, assistants, and guardians, of the poor of the city and county of *Exeter*; and that the same shall be ascertained, assessed, raised, collected, and levied, by such and the same ways and means as the money raised for the relief of the poor within the said city and county is, by virtue of two acts of parliament, the one of them made in the ninth and tenth years of king *William* the third, and the other of them in the thirty-first year of his late majesty king *George* the second, directed to be raised: and it shall and may be lawful for the several persons authorized to put the said acts in execution, to cause to be raised and levied such sum or sums as shall be necessary for that purpose, over and above what they are already authorized to raise for the relief of the poor of the said city and county; and all and every person and persons who are by the said acts, or either of them, required to do any act, matter, or thing, for the ascertaining, assessing, confirming, or altering of assessments, collecting and levying the sums thereby directed to be raised for the relief of the poor, are hereby required and authorized to do all such and the like acts, matters, and things, for the ascertaining, assessing, confirming, or altering assessments, collecting and levying the money hereby directed to be raised, and shall be subject to all such forfeitures and penalties, in case of their neglect or refusal to perform the same, as are imposed upon offences of the like nature by the above mentioned acts, or either of them; and also in the same manner, and by the same ways and means, to raise and levy, or cause to be raised and levied, such further sum and sums of money as shall have been advanced and paid by the treasurer of the corporation of the poor for the maintenance of such wives and families, and shall cause the same to be repaid to the treasurer of the said corporation.

Sec. 85. " Provided also, and be it enacted, That all monies to be levied by parish rates to be made within the city and county of the city of *Bristol*, by virtue of this act, shall be paid, ascertained, assessed, raised, collected, levied, and repaid, in such manner, and by such and the same ways and means, as are prescribed to be observed in raising money for the relief of the poor within the said city and county of the city of *Bristol*, by virtue of any act or acts of parliament relating thereto; and that it shall and may be lawful for the several persons authorized to put the said acts in execution, to cause to be raised and levied such sum or sums, over and above what they are already authorized to raise for the relief of the poor of the said city and county, and also in the same manner, and by the same ways and means, to raise and levy, or cause to be raised and levied, such further sum and sums of money as shall have been advanced and paid by the treasurer of the corporation of the poor for the maintenance of such wives and families, and shall cause the same to be repaid to the treasurer of the said corporation.

and the money already advanced by the treasurer of the corporation of the poor is to be assessed and repaid him; and all acts requisite thereto, are to be done under like penalties, as are prescribed with

by the treasurer of the corporation of the poor, and shall cause the same to be repaid to the treasurer of the said corporation; and that all and every person and persons, who are by the said acts, any or either of them, required to do any act, matter, or thing, for the ascertaining, assessing, confirming or altering of assessments, collecting and levying the sums thereby directed to be raised for the relief of the poor, are hereby required and authorized to do all such and the like acts, matters, and things, for the ascertaining, assessing, confirming, or altering assessments, collecting and levying the money hereby directed to be raised, and shall be subject to all such forfeitures and penalties, in case of their neglect or refusal to perform the same, as are imposed upon officers of the like nature by the above mentioned acts, any or either of them.

Where treasurers shall reimburse to overseers any money, on account of the weekly allowance to the families of militia men serving in any county, other than that wherein such families dwell, they are to transmit an account thereof, signed by a justice, to the treasurer of the county wherein such

Sec. 86. " Provided always, and be it enacted, That the treasurer of any county, riding, city, town, liberty, division, or place within the part of *Great Britain* aforesaid, who shall, after the passing of this act, reimburse to any overseer or overseers of the poor of any parish, tything, township, hamlet, or vill, any sum or sums of money, in pursuance of the directions of this act, on account of the weekly allowance to the family of any militia man, serving in the militia of any county, riding, city, town, liberty, division, or place, other than the county, riding, city, town, liberty, division, or place where such family shall dwell, shall deliver or transmit an account of such money as he shall have so reimbursed as aforesaid, signed by one or more justice or justices of the peace for the county, riding, city, town, liberty, division, or place, where such family shall dwell, to the treasurer of the county, riding, city, town, liberty, division, or place, in the militia whereof such militia man shall serve; and thereupon the treasurer, to whom such account shall have been delivered or transmitted as aforesaid, shall, and is hereby required to pay to the treasurer, who shall have so delivered or transmitted such account, the sum or sums so by him reimbursed to such overseer or overseers, and shall be allowed the same in his accounts.

If a quaker be chosen, and refuses to serve, or provide a substitute, the deputy lieutenants may provide one, and levy the expence by distress and sale;

Sec. 87. " And be it enacted, That if any person, being one of the people called *Quakers* shall be chosen by lot to serve in the militia, and shall refuse or neglect to appear, and to take the oath, and serve in the militia, or to provide a substitute, to be approved as aforesaid, who shall take the said oath, and subscribe his consent to serve as the substitute of such quaker; then, and in every such case, any three deputy lieutenants, or any two deputy lieutenants together with any one justice of the peace, or any one deputy lieutenant together with any two justices of the peace, shall, if they think proper, upon as reasonable terms as may be, provide and hire a fit person, who shall take the said oath, and subscribe his consent to serve in the said militia for the space of three years, as the substitute of such quaker; and any three deputy lieutenants, or any two deputy lieutenants together with any one justice of the peace, or any one deputy lieutenant together with any two justices of the peace, are hereby impow-

ered and required to levy by distress and sale of the goods and chattels of such quaker, by warrant under their hands and seals, such sum or sums as shall be necessary to defray the expence of providing and hiring such person to serve in the militia, for the space of three years, as the substitute of such quaker, so refusing or neglecting as aforesaid; rendering the overplus, if any, after deducting the charges of such distress and sale, to such quaker, upon whom such distress shall have been made as aforesaid: and in case any measures shall be used in making distress as aforesaid, which may be by any such quaker thought oppressive, it shall be lawful for such quaker to complain thereof to the deputy lieutenants and justices of the peace, at their next meeting, who are hereby impowered and required to hear and finally determine the same.

but if any oppressive measures be used in making such distress, he is to be redressed, upon complaint made by him: And where any quakers shall refuse to pay to the rates authorized by this act to be made, the justices upon complaint of the churchwardens, may order reason-

Seet. 88. " Provided always, and be it further enacted by the authority aforesaid, That in every parish, tything, or place, or two or more parishes, tythings, or places, so added together as aforesaid, in which any such rates shall be made, where the churchwardens or overseers shall make complaint to a justice of the peace, that a quaker or quakers refuse to pay the sum or sums of money he or they shall be rated at, such justice may act to be made, and shall order such cost and charges, for levying such distress, as he shall think reasonable, not exceeding the sum of ten shillings on each of the said quakers where there are no more than two of them, and, where there are a greater number, not exceeding five shillings on each of the said quakers.

able cost and charges for levying the distress, in proportion to the sums here allowed.

Seet. 89. " And be it enacted and declared, That it may and shall be lawful for any deputy lieutenant or justice of the peace to act in the execution of this act, in any and every subdivision within the county, riding, or place, for which he is or shall be commissioned; and that each and every such deputy lieutenant and justice of the peace hath and shall have the same power and authority therein, as is by this act given to any deputy lieutenant or justice of the peace, within the subdivision to which he is or shall be particularly appointed.

Dep. lieutenants and justices may act in any and every subdivision of the county for which they are commissioned.

Seet. 90. " And be it enacted, That his majesty's lieutenant for any county, riding, or place, may and shall appoint a clerk for the general meetings within such county, riding, or place, and may displace such clerk if he shall think fit, and appoint another in his room; and the deputy lieutenants within their respective subdivisions, or the major part of them present, may and shall appoint a clerk for their subdivision, and may displace such clerk, if they or the major part of them present shall think fit, and appoint another in his room.

A clerk for the general meetings is to be appointed by the lord lieutenant and clerks for the subdivision meetings, by the deputy lieutenants.

Seet. 91. " And be it enacted, That any two deputy lieutenants together with any one justice of the peace, or any one deputy lieutenant together with any two justices of peace, within the counties of *Cumberland, Huntingdon, Monmouth, Westmorland, and Rutland*, and within all the several counties and places within the said dominion of *Wales*, respectively, shall have and exercise all and every the powers conferred by this act on any three deputy lieutenants of any county, riding, or place, within that

Two deputy lieutenants and one justice, or one deputy and two justices, may exercise the same.

part

powers in the part of Great Britain called England; any thing herein contained to the contrary notwithstanding.

Cumberland, Huntingden, Monmouth, Westmorland, Rutland, and Wales, as are conferred on three deputy lieutenants of any other county.

Where a sufficient number to act shall not appear at any subdivision meeting, a sufficient number of deputy lieutenants and justices of the peace to act, the clerk of such meeting shall, by notice given in writing to all the deputy lieutenants within such subdivision, or left at their respective places of abode, appoint another meeting to be held within fourteen days at the same place where such meeting had been before appointed to be held, giving at least five days notice of another meeting notice thereof.

to be held within fourteen days after the former meeting.

Fines for not serving are to be applied in providing substitutes ;

and the surplus, if any, to be applied as part of the regimental stock.

Sett. 93. " And be it enacted, That all sums of money arising by forfeitures paid by, or levied upon, persons refusing to serve in the militia personally or by substitute, shall be applied, in the first place, by any three deputy lieutenants, or by any two deputy lieutenants together with any one justice of the peace, or by any one deputy lieutenant together with any two justices of the peace, within their respective subdivisions, in providing a substitute for the person who shall have paid such penalty ; and if any part of such penalty shall remain after such substitute shall be provided, the same shall be paid to the colonel or commanding officer of the regiment or battalion, and be applied as part of the regimental stock.

Persons liable to serve, having more than one place of residence, shall be deemed to reside in, and shall serve only in the county where first returned in the

Sett. 94. " And be it enacted, That every person liable to serve in the militia, having more than one place of residence, shall be deemed to reside only and shall serve as a militia man, within the county, riding, or place, where his name shall have been first inserted in a list, and returned as herein directed, subjecting him to such service; and the clerk to the subdivision meeting to which such list shall be returned, shall, if any such person require the same, grant a certificate *gratis*, under his hand, that such person's name was inserted in such list, specifying the times when such list was made and returned.

list ; and certificates, if required, shall be granted *gratis* for such returns.

A general meeting is to be held of the lord lieutenant and deputies, &c. within a month after the return of the rolls from the deputy lieutenants to form the men, (if not already) into regiments of

Sett. 95. " And be it enacted, That within one month after the said rolls are so returned from the deputy lieutenants and justices of the peace as aforesaid, his majesty's lieutenant together with any two or more deputy lieutenants, and on the death or removal, or in the absence of his majesty's lieutenant, any three or more deputy lieutenants, shall meet together, and form and order the militia for their respective counties, ridings, or places (where the same has not already been formed and ordered) into regiments, consisting, where the number of militia men will admit the same, of twelve, but in no case of less than eight, companies of eighty men at the most, and sixty men at the least, of persons living as near to each other as conveniently can be ; and shall post to each company proper officers commissioned and qualified aforesaid ; (that is to say) the

field

field officers of a regiment shall be, one colonel, one lieutenant colonel, and one major; and where the number of private men shall amount to five companies, or to any number under eight companies, such militia shall be formed into a battalion, with one lieutenant colonel, and one major, and no other field officer; and where the number of private men shall amount to three companies, or to any number under five companies, such militia shall also be formed into a battalion, with one lieutenant colonel or major, and no other field officer: and in each regiment or battalion of militia, a number of captains, lieutenants, and ensigns, equal to the number of companies in such regiment or battalion, grenadier companies excepted, wherein there shall be one captain and two lieutenants. where the number of men shall make 5 or more companies, but less than 8, they are to be formed into battalions, with 1 lieutenant colonel, and 1 major; and to a battalion of 3 companies, or less than 5, 1 lieutenant colonel or major; and 1 captain, lieutenant, and ensign to each company, grenadier companies excepted, wherein are to be 1 captain and 2 lieutenants.

Sec. 96. " And be it enacted, That were the militia of any county, riding, or place, has been already formed and ordered, his majesty's lieutenant together with any two deputy lieutenants of such county, riding, or place, shall, if the said militia shall be then disembodied, within two months after the passing this act, reform the same, according to the rules by this act prescribed for the first forming and ordering the militia; and if the same shall be embodied, then within two months after it shall be disembodied and returned to the respective counties.

to the rules prescribed for the first forming and ordering them.

Sec. 97. " And be it enacted, That in every county, riding, and place, and in every city and town being a county, within the part of Great Britain aforesaid, where the number of private militia men shall not be sufficient to form a regiment or battalion, according to the intent and meaning of this act, the following establishment shall take place therein; (that is to say) the militia of such counties, ridings, places, cities, and towns, shall be formed into independant companies, each company to consist of eighty private men at the most, and sixty private men at the least, with one captain, one lieutenant, and one ensign, to each company; and it shall be lawful for his majesty, his heirs, and successors, to join together any number of such independent companies, and therewith to form a battalion or battalions, or to incorporate them with any regiment or battalion, regiments or battalions of militia, but so as the number of companies in any such regiment or battalion do not exceed, or fall short of, the number of companies of which a regiment or battalion of militia is herein before respectively allowed to consist.

ed with some regiment or battalion, so as the number of companies therein does not exceed, or fall short of, the number a regiment or battalion ought to consist of.

Sec. 98. " And be it enacted by the authority aforesaid, That when any regiment or battalion of militia shall be unembodied, the colonel, or, When a regiment or battalion shall be

unembodied, or, where there is no colonel, the commanding officer, shall and may the commanding officer appoint a regimental clerk to such regiment or battalion. The commanding officer may appoint a regimental clerk thereto.

The militia is to be trained and exercised, by regiment or battalion, twice a year, 14 days each time, or once a year, for 28 days together, at the most convenient times and places; during which time all the provisions in the act for punishing mutiny and desertion, not extending to life or limb, are to take place for the officers and men;

who are to be quarter'd and billeted by the civil magistrate, in inns, livery stables, and public houses, application for that purpose being made by the commanding officer: *Sec. 100.* "And be it enacted, That it shall and may be lawful for the mayors, bailiffs, constables, tythingmen, headboroughs, and other chief magistrates and officers, of cities, towns, parishes, tythings, villages, and other places, within that part of *Great Britain* called *England*, dominion of *Wales*, and town of *Berwick upon Tweed*, and in their default or absence, for any one justice of the peace inhabiting within or near any such city, town, parish, tything, village, or place, and for no others, and they are hereby required, to quarter and billet the officers and private men serving in the militia, at the times when they shall be called out to annual exercise, in inns, livery stables, ale-houses, victualling-houses, and all houses of persons selling brandy, strong waters, cyder, wine, or metheglin, by retail, upon application to them made by the lord lieutenant, or by the colonel or commanding officer of the militia of the county, riding, or place.

Serjeants, drummers, and fifiers, are to be quarter'd and billeted in like manner; but are to be provided with convenient lodgings only, at such times as no provision has by law been made for that purpose. *Sec. 101.* "And be it enacted, That it shall and may be lawful for the mayors, bailiffs, constables, tythingmen, headboroughs, and other chief magistrates and officers of cities, towns, parishes, tythings, villages, and other places, within that part of *Great Britain* called *England*, the dominion of *Wales*, and the town of *Berwick upon Tweed*, and in their default or absence, for any one justice of the peace inhabiting in or near any such city, town, parish, tything, village, or place, and for no others, and they are hereby required to quarter and billet serjeants, drummers, and fifiers, serving in the militia, in inns, livery stables, ale-houses, victualling-houses, and all houses of persons selling wine, brandy, strong waters, cyder, or metheglin, by retail, the occupiers whereof are hereby required to provide for such serjeants, drummers, and fifiers, at such times for which no provision has by law been made for that purpose, convenient lodgings only.

Sec.

Seet. 102. “ And be it enacted, That the colonel or commanding officer of every regiment or battalion of unembodied militia shall, and he is hereby required, as often as the regiment or battalion shall be called out to exercise, to return to his majesty’s lieutenant of the county, riding, or place, for which such regiment or battalion shall serve, a true state of such regiment or battalion.

A return is to be made to the lord lieutenant of the state of the regiment, &c. while unembodied when called out to exercise.

Seet. 103. “ And be it enacted, That notice of the time and place, or times and places, of exercise to which the militia men of each parish, tything, or place, are to resort, shall be sent by the clerk of the general meeting to the chief constables or other officers of the several hundreds, rapes, laths, wapentakes, or other division, with directions to forward the same to the constables, tythingmen, headboroughs, or other officers of the several parishes, tythings, or places, within their respective hundreds, rapes, laths, wapentakes, or other divisions; which constables, tythingmen, headboroughs, or other parish officers, shall cause such notice to be affixed on the doors of the churches or chapels belonging to their respective parishes, tythings, or places, or if any place, being extra-parochial, shall have no church or chapel belonging thereto, on the door of the church or chapel of some parish, tything, or place, thereunto adjoining; and all such militia men shall duly attend at the times and places of exercise so to be appointed: and if any militia man (not labouring under any infirmity incapacitating him) shall not appear at such time and place or times and places, so appointed in such notice as aforesaid, every such militia man being convicted thereof, upon oath, before one justice of the peace, shall forfeit and pay the sum of twenty pounds; and if such militia man shall not immediately pay such penalty, the justice of the peace, before whom such militia man shall be so convicted, shall, by warrant, commit such militia man to the common gaol of the county, riding, or place, where he shall have been so convicted, there to remain without bail or mainprize for the space of six months, or until he shall have paid the penalty aforesaid.

Notice of the times and places of exercise to be sent to the chief constables, to be forwarded by them to the parish, &c. and to be affixed on the church doors of the respective parishes; and if any militia man (not being disabled) neglected to appear according to such notice, he forfeits 20*l.* and on non-payment, is to be committed for 6 months, or until he shall have paid the penalty.

Seet. 104. “ And be it enacted, That the captain of each company of militia shall keep in his own custody, or leave and deposit with the several serjeants belonging to his company, or with such person or persons as the said captain shall appoint for that purpose, the arms, cloaths, and accoutrements, provided for his company of militia; and the church-wardens of every parish or place where the said arms, clothes, and accoutrements, are so deposited, or one of them, is and are hereby required to provide, at the expence of such parish or place, a chest, in which such captain, serjeant, or other person so appointed as aforesaid, shall keep the said arms in some dry part of his house or dwelling, under lock and key, and another chest in which he shall keep, under lock and key, the said clothes and accoutrements; and the serjeant, or such other person as shall be appointed to train and discipline the men, is hereby required to take care that, after exercise, every militia man cleans and returns his

The captain is to have the charge of the arms, clothes, and accoutrements of his company; and the church-wardens are to provide chests for the safe keeping thereof; and care is to be taken that the men return them in good order after arms, exercise.

arms, clothes, and accoutrements, to his captain, or to such person or persons as shall be appointed as aforesaid to receive the same.

The lord lieutenant or deputy in his absence, may seize and remove the arms, &c. when necessary to the public peace; and lodge them with other persons.

Secl. 105. "And be it enacted, That his majesty's lieutenant of any county, riding, or place, or, in the absence of his majesty's lieutenant, any three or more deputy lieutenants, is and are hereby authorized, by warrant under his hand and seal, or their hands and seals, to employ such person or persons as he or they shall think fit, to seize and remove the arms, clothes, and accoutrements, belonging to the militia, whenever his majesty's said lieutenant or deputy lieutenants shall adjudge it necessary to the peace of the kingdom, and to deliver the said arms, clothes, and accoutrements, into the custody of such person or persons as his majesty's said lieutenant or deputy lieutenants shall appoint to receive the same, for the purposes of this act.

Persons intrusted with the custody of the arms, &c. delivering out the same, unless for exercise, or by proper command, may be committed for 6 months.

Secl. 106. "And be it enacted, That if any serjeant, or any other person intrusted by the captain with the custody of any arms, clothes, or accoutrements, belonging to the militia, shall deliver out any such arms, clothes, or accoutrements, unless for exercising the men, or by the command of his superior officer, it may and shall be lawful for any two or more justices of the peace to commit such offender to the common gaol of the county, riding, or place, where the offence shall be committed, there to remain without bail or mainprize for any time not exceeding six months.

No pay, arms, or clothing, are to be issued, nor adjutant or serjeants appointed, till 3 fifths of the men and officers have been inrolled, and taken out their commissions.

Secl. 107. "And be it further enacted by the authority aforesaid, That no pay, arms, accoutrements, or clothing, shall be issued, and that no adjutant or serjeant shall be appointed, for the militia of any county, riding, or place, until it shall appear by a return signed by his majesty's lieutenant, or on the death or removal, or in the absence, of his majesty's lieutenant, by any three deputy lieutenants, that three fifths of the militia men of the said county, riding, or place, have been inrolled and that three fifths of the officers have taken out their commissions.

Muskets for the militia are to be marked with an (M) and the name of the county, &c.

Secl. 108. "And be it enacted, That all muskets delivered for the service of the militia shall be marked distinctly in some visible place with the letter M, and the name of the county, riding, or place to which they belong.

Militia man who shall sell, pawn, or lose, his arms, clothes, or accoutrements, forfeits 3l. and on non-payment, is to be committed to the house of correction for 1 month.

Secl. 109. "And be it enacted, That if any militia man shall sell, pawn, or lose any of his arms, clothes, or accoutrements, and shall be thereof convicted upon oath before any one justice of the peace, such militia man shall forfeit and pay a sum not exceeding three pounds; and if such militia man shall not immediately pay such penalty, the justice of the peace before whom such militia man shall be so convicted as aforesaid, shall, by warrant, commit such militia man to the house of correction for the space of one month, and until satisfaction be made for the same; and if he shall not be of ability to make such satisfaction, then for the space of three months: and if any militia man shall refuse or neglect to return his arms, clothes, and accoutrements, in good order to his captain, or

to such person as shall be appointed as aforesaid to receive the same, when- and until satisfaction be-
ever demanded, such militia man being thereof convicted as aforesaid, shall, for every such offence, forfeit and pay the sum of ten shillings; made; and if
and if such militia man shall not immediately pay such penalty, the justice of the peace before whom such militia man shall be so convicted as to be committed
aforesaid, shall, by warrant, commit such militia man to the house of correction for any time not exceeding fourteen days. ted for three
months; and
if he neglect

to return them in good order when demanded, he forfeits 10s. and on non-payment, is to be committed
for any time not exceeding 14 days.

Sec. 110. " And be it enacted, That if any person shall knowingly and willingly buy, take in exchange, conceal, or otherwise receive, contrary to the true intent and meaning of this act, any arms, clothes, or accoutrements belonging to the militia, upon any account or pretence whatsoever, the person so offending, being convicted thereof, upon oath, before one or more justice or justices of the peace, shall forfeit and pay, for every such offence, the sum of five pounds: and if such offender shall not immediately pay such penalty, the justice or justices of the peace before whom such offender shall be so convicted as aforesaid, shall, by warrant under the hand and seal, or hands and seals, of such justice or justices, levy the same by distress and sale of the offender's goods and chattels, rendering the overplus (if any) on demand, after deducting the charges of such distress and sale, to such offender, upon whom such distress shall have been made as aforesaid; and for want of such distress, shall commit such offender to the common gaol of the county, riding, or place, where the offence shall have been committed, there to remain without bail or mainprize, for the space of three months, or shall cause such offender to be publicly whipped, at the discretion of such justice or justices.

Sec. 111. " Provided always, and be it enacted, That no officer of the militia, or private militia man, shall be liable to any penalty or punishment, for or on account of his absence during the time he shall be going to vote at any election of a member to serve in parliament, or during the time he shall be returning from such election.

for a member of parliament, or returning.

Sec. 112. " And be it enacted, That if the serjeant, or other person, appointed by any captain of the militia to receive and keep in his custody the arms, clothes, and accoutrements thereto belonging, shall not complain within three days to some neighbouring justice of the peace, of any militia man's not having returned his arms, clothes, and accoutrements as before directed, such serjeant or other person appointed as aforesaid, being thereof convicted on oath before one of his majesty's justices of the peace, shall forfeit and pay the sum of twenty shillings; which penalty, if the offender shall not immediately pay the same, shall be levied by distress and sale of the offender's goods and chattels, by warrant under the hand and seal of the justice of the peace before whom such offender shall be so convicted as aforesaid, rendering the overplus (if any) on demand, after deducting the charges of such distress and sale, to such offender, upon whom such distress shall have been made as aforesaid.

Sec.

The serjeants are to receive their military orders from the adjutant, and superior officers; and are to report to them, or to 2 deputy lieutenants, or a civil magistrate, the crimes and misdemeanors of the men.

Señ. 113. " And be it enacted, That the several serjeants shall receive all their military orders, with respect to the training the militia men under their care, from the adjutant and their superior officers; and are hereby required to report, from time to time, all crimes and misdemeanors of the several militia men under their command, to their adjutant or superior officers, or to any two or more deputy lieutenants, or to some civil magistrate, as the case shall require.

Non-commission officer being negligent in his duty, or insolent, or disobedient to his superior officer, forfeits any sum not exceeding 30s. and on non-payment, may be committed for 14 days; and is liable to be discharged.

Señ. 114. " And be it enacted, That if any non-commission officer shall be negligent in his duty, or insolent or disobedient to the orders of the adjutant, or other his superior officer, and be thereof convicted as aforesaid, upon the oath of the adjutant, or other superior officer, before one or more justice or justices of the peace, such non-commission officer shall forfeit and pay any sum not exceeding thirty shillings, at the discretion of such justice or justices; and if such non-commission officer shall not immediately pay such penalty, the justice or justices of the peace before whom such non-commission officer shall be so convicted as aforesaid, shall, by warrant, commit such non-commission officer to the house of correction for the space of fourteen days; and his majesty's lieutenant, or the colonel or commanding officer of the regiment or battalion, may discharge such non-commission officer, if he shall think fit.

Chief constables and others are required to be aiding and assisting to the lord lieutenants, deputies, and justices, &c. in the execution of this act.

Señ. 115. " And be it enacted, That all chief constables, petty constables, tythingmen, headboroughs, and other officers, of hundreds, rapes, laths, wapentakes, parishes, tythings, and places, within that part of *Great Britain* called *England*, and the dominion of *Wales*, shall, and they are hereby required to be aiding and assisting to his majesty's said respective lieutenants, and their deputy lieutenants, and to the justices of the peace, and to any of them, and to all to whom any power or authority is by this act given, in the execution thereof.

In case of actual invasion, or imminent danger thereof, or of rebellion, the king, having first communicated the occasion to parliament, if sitting, and if not, to the council, and notified the same by proclamation, may order the militia to be drawn out and

Señ. 116. " And be it enacted, That in case of actual invasion, or upon imminent danger thereof, or in case of rebellion, it may and shall be lawful for his majesty, his heirs and successors (the occasion being first communicated to parliament, if the parliament shall be then sitting, or declared in council, and notified by proclamation, if no parliament shall be then sitting, or in being) to order and direct his or their lieutenants, and on their death or removal, or in their absence from their respective counties, ridings, or places, any three or more deputy lieutenants, with all convenient speed, to draw out and embody all the regiments and battalions of militia of their respective counties, ridings, or places, already raised, and not yet embodied, or herein appointed to be raised and trained, or so many of them as his majesty, his heirs, and successors, shall, in his or their great wisdom, judge necessary, in such manner as shall be best adapted to the circumstances of the danger; and to put the said forces under the command of such general officers as his majesty, his heirs, or successors, shall be pleased to appoint over them; and to direct them to be led by their respective

spective officers into any parts of this kingdom for the suppression of such embodied ;
 invasions and rebellions : and the officers of the militia and private militia or so many of
 men of the regiments, battalions, and independent companies, already them as he
 embodied, or hereafter to be embodied, shall, from the time of their shall judge ne-
 being drawn out and embodied as aforesaid, and until they shall be re- cessary ; and
 turned again, by order of their commanding officers, to their respective put them un-
 parishes or places of abode, remain under the command of such general der command
 officers, and shall be entitled to the same pay as the officers and private of general of-
 men in his majesty's other regiments of foot receive, and no other : and ficers ; and di-
 the officers of the militia shall, during such time as aforesaid, rank with rect them to
 the officers of his majesty's other forces of equal degree with them, as be led into
 the youngest of their rank ; and, during, such time, all the provisions con- any parts of
 tained in any act of parliament which now is or shall be then in force for the kingdom
 the punishing mutiny and desertion, and for the better payment of the for the sup-
 army and their quarters, shall extend to, and take place in respect of, pression of in-
 the officers and private militia men of every such regiment, battalion, or rebellions ;
 independent company of militia respectively (excepting only as to such and they are
 particulars as are or shall be otherwise especially provided for by this or to receive pay
 any act or acts of parliament, hereafter to be made, for regulating the as the king's
 militia forces within the part of *Great Britain* aforesaid) and when they other regi-
 shall be returned again to their respective parishes or places of abode, ments of foot,
 they shall be under the same orders and directions only, as they were till they shall
 before they were drawn out and embodied as aforesaid ; and if any non- be returned
 commission officer of the militia or private militia man shall be maimed again ; and
 wounded in actual service, he shall be equally intitled to the benefit of the officers
Chelsea Hospital with any non-commission officer or private soldier belong- are to rank
 ing to his majesty's other forces ; and his majesty's lieutenant of every with those of
 such county, riding, or place, and on the death or removal, or in the equal degree
 absence of his majesty's lieutenant from his county, riding, or place, in his ma-
 three or more deputy lieutenants, shall issue his or their order to the jesty's other
 chief constables or other officers of their respective hundreds, rapes, laths, forces, as the
 wapentakes, or other divisions, with directions to forward the same youngest of
 immediately to the constables, tythingmen, headboroughs, or other officers their rank ;
 of the several parishes, tythings, and places, within their respective divi- and are to be
 sions ; and such constables, tythingmen, headboroughs, or other officers under all the
 are hereby required, upon receipt thereof, forthwith to give or leave in provisions of
 writing, notice, or cause such notice to be given to the several militia the mutiny
 men, or left at the usual places of their respective abodes within their act ; excepting
 respective parishes, tythings, or places, to attend at the time and place where it is
 mentioned in such order ; and if any militia man so ordered to be drawn otherwise spe-
 out and embodied as aforesaid (not labouring under any infirmity incapa cially provid-
 citing him to serve as a militia man) shall not appear and march in pur- ed for ; and
 suance of such order, every such militia man being convicted thereof, upon when return-
 oath, before two or more justices of the peace shall forfeit and pay the ed to their
 sum of forty pounds ; and if such militia man shall not immediately pay own parishes,
 such penalty, the justices of the peace, before whom such militia man they are to
 shall be so convicted, shall, by warrant, commit such militia man to the be under the
 common same orders
 and directions
 only as be-
 fore they were
 drawn out and
 embodied :
 and any non-
 commissioned
 officer or pri-
 vate man be-
 ing maimed
 or wounded

in the service, common gaol of the county, riding or place, where he shall have been so are equally convicted, there to remain without bail or mainprize for the space of twelve intitled, with months, or until he shall have paid the penalty aforesaid; and if any person those of his Majesty's person shall harbour or conceal any militia man, not attending when ordered other forces, out into actual service, knowing him to be a militia man, and shall be to Chelsea thereof convicted upon oath, before any justice of the peace, every such Hospital. person shall, for every such offence, forfeit and pay the sum of five pounds, The lord lieu. to be levied by distress and sale of the offender's goods and chattels, by or deputies, warrant under the hand and seal of such justice, rendering the overplus, if are to issue orders of the embodying to any, after deducting the said penalty, and the charge of such distress and the chief con- sale, to the party whose goods and chattels shall be so distrained and sold; stables, to be and for want of sufficient distress, it may and shall be lawful for such justice, forwarded to and he is hereby required, to commit such offender to the house of correc- the petty tion for the space of two months, or to cause such offender to be publickly constables, whipped at the discretion of such justice. who are there- upon to give

notice to the men to attend; and any man, not being disabled, refusing to appear and march, forfeits 40 l. and on non-payment, is to be committed for 12 months, or until payment of the penalty: and any person knowingly harbouring or concealing any militia man, absconding when called out into actual service, forfeits 5 l. to be levied by distress and sale; and for want of distress, he may be committed for 2 months, or be publickly whipped.

In case of in- *Secl. 117.* " And be it enacted, That if at any time (in case of actual in- vasion, or vation, or upon imminent danger thereof, or in case of rebellion) the par- imminent liament shall happen to be separated by such adjournment or prorogation danger there- as will not expire within fourteen days, it shall be lawful for his Majesty, of, or of re- his heirs, and successors, to issue a proclamation for the meeting of the bellion, the parliament upon such day as he or they shall thereby appoint, giving four- parliament, if adjourned, or teen days notice of such appointment; and the parliament shall according- prorogued, or ly meet upon such day, and continue to sit and act in like manner to all above 14 days, is to be intents and purposes, as if it had stood adjourned or prorogued to the same summoned to day. meet; and are

ta sit and act as if adjourned, or prorogued, to the day day of such meeting.

Officers and *Secl. 18.* " And be it enacted, That the officers of the militia and pri- men are inti- vate militia men, who shall be drawn out and embodied, shall be intitled tled to pay, to pay from the day of the date of his Majesty's warrant for that from the date of the king's purpose. warrant for their being embodied.

When a regi- *Secl. 119.* " And be it enacted, That when any regiment or battalion ment, &c. is of militia shall be drawn out and embodied, and during the time they shall drawn out and continue embodied, the colonel, or, where there is no colonel, the com- embodied, the manding officer of such regiment or battalion, shall and may appoint an commanding officer is to agent to such regiment or battalion; and, such colonel, and, where there agent to such regiment or battalion; and, such colonel, and, where there is no colonel, the commanding officer, shall be and is hereby made subject agent thereto, and liable to make good all deficiencies that may happen upon account of taking secu- the pay, clothing, or public stock of such regiment or battalion: and such rity; and is colonel

colonel, and, where there is no colonel, the commanding officer, shall take security from the agent so appointed.

liable to make good any deficiencies of

pay, cloathing, or regimental stock.

Señ. 120. " And be it enacted, That when the militia of any county, riding, or place, shall be ordered out into actual service, it shall and may be lawful for the captain of any company of militia to augment his company, by incorporating, with the consent of his majesty's lieutenant, or, in the absence of his majesty's lieutenant, with the consent of two or more of the deputy lieutenants, any number of persons who shall offer themselves as volunteers, and who shall appear to him to be sufficiently trained and disciplined, and provided with proper cloaths, arms, and accoutrements, and who shall take the oath appointed to be taken by this act, and sign their consent to serve in the militia for the time of such actual service, and to submit to the same rules and articles of war as militia men are by this act liable to during the time of their continuing in actual service.

A captain may, with leave, augment his company, when ordered out into actual service, with volunteers, if properly disciplined, and provided, and who will take the oath appointed, and sign the

rolls, and be subject to the articles of war.

Señ. 121. " And be it enacted, That no officer serving in the militia shall sit in any court martial upon the trial of any officer or soldier serving in any of his Majesty's other forces; nor shall any officer serving in any of his Majesty's other forces, sit in any court martial upon the trial of any officer or private man serving in the militia.

Officers of the militia and his Majesty's other forces, are not to sit indiscriminately on

trials for offences committed by the different corps.

Señ. 122. " And be it enacted, That when the militia of any county, riding, or place, shall be ordered out into actual service, the receiver or receivers general of the land tax for such county, riding, or place, shall, and he or they is and are hereby required to pay, or cause to be paid, to the captain or other commanding officer of each company of militia so ordered out, or being out in service for such county, riding, or place, one guinea for each private militia man belonging to his company, whether such militia man marched with the company when first drawn out; or was ordered out afterwards to join such company, to be paid over by such captain or other officer to every such private militia man who belonged to his company at the time such militia was ordered out into actual service, on or before the day appointed for marching; and to such militia man, who shall be afterwards ordered out, when he shall join his company; and such receiver or receivers general shall be allowed the same in his or their accounts,

Receivers general of the land tax are to pay to the captain or other commanding officer of such company when ordered out into actual service, 1 guinea per man for each private man belonging thereto, whether such man marched with the com-

pany when drawn out, or was afterwards ordered to join it; to be paid over by the captain to the men before they march; and to such as shall be afterwards ordered out, when they shall join the companies.

Señ. 123. " And be it enacted, That when the militia shall be called out to be trained and exercised, it may and shall be lawful for any justice of the peace of any county, riding, or place, being duly thereunto required by an order from his majesty's lieutenant, or from any deputy lieutenant of the county, riding, or place, or from the colonel or other chief commission officer upon the place of any regiment, company, or detachment

When the militia shall be called out, to be trained, the justices of the peace, upon an order from the lord

ment

lieutenant or deputy, or commanding officer, are to issue warrants for providing such carriages for the use of the troops, as are ordered, with able men to drive them; and where a sufficient number cannot be provided within the county, &c. the neighbouring justices are to issue warrants for furnishing what shall be so wanted. Officer is to pay down to the constable the following rates for the use of such carriages, 1 s. for every mile a waggon with five horses, or a wain with 6 oxen, or 4 oxen and 2 horses; 9 d. for every cart with 4 horses; and so in proportion; for which a receipt is to be given him; and the constables are to order carriages to be furnished accordingly; the same to be for one day's journey only; and any additional expences incurred thereby, are to be repaid out of the county stock.

ment of militia, to issue out his warrant, under his hand, to the chief constables of hundreds, rapes, laths, wapentakes, or divisions, or to the constables, tythingmen, headboroughs, or other officers of the parishes, tythings, or places, from, through, near, or to which any such regiment or company of militia men, or any detachment thereof, shall be ordered to march, requiring them to make such provision for carriages of the arms, clothes, accoutrements, powder, match, bullets, or other warlike materials, with able men to drive such carriages, as is and are mentioned in the said order; but in case such sufficient carriages and men cannot be provided within any such county, riding, hundred, rape, lath, wapentake, division, parish, tything or place, then the next justice or justices of the peace shall, upon such order as aforesaid being shewn unto him or them, issue his or their warrant to the chief constables, constables, tythingmen, headboroughs, or other such officers of the next county, riding, hundred, rape, lath, wapentake, division, parish, tything, or place, for the purposes aforesaid, to make up such deficiency of carriages: and such lieutenant, deputy lieutenant, colonel, or other chief commission officer upon the place, who, by virtue of the aforesaid warrant from the said justice of the peace, shall demand such carriages of such chief constable, constable, tythingman, headborough, or other officer, is and are hereby required, at the same time, to pay down in hand to the chief constable, constable, tythingman, headborough, or other officer, for the use of the person who shall provide such carriages and men, the sum of one shilling for every mile any waggon with five horses shall travel; and the sum of one shilling for every mile any wain with six oxen, or with four oxen and two horses, shall travel; and the sum of nine-pence for every mile any cart with four horses shall travel; and so in proportion for carriages drawn by a less number of horses or oxen; for which respective sums so received, the said chief constable, constable, tythingman, headborough, or other officer, is hereby required to give a receipt in writing to the person or persons paying the same; and such chief constable, constable, tythingman, headborough, or other officer, shall order and appoint such person or persons having carriages within their respective hundreds, rapes, laths, wapentakes, parishes, tythings, or places, as they shall think proper, to provide and furnish such carriages and men according to the warrant aforesaid; which persons so ordered are hereby required to provide and furnish the same accordingly for one day's journey, and no more: and in case the chief constables, constables, tythingmen, headboroughs, or other officers, shall be at any charges for such carriages, over and above what is so received by them of his majesty's said lieutenant, the said deputy lieutenant, colonel, or other chief officer, as aforesaid, such overplus shall be borne by each county, riding, or place, where such additional expence shall be incurred, and be repaid to them without fee or reward by the treasurer of each respective county, riding, or place, out of the publick stock.

Stat. 124. “ And be it enacted, That if any such chief constable, constable, tythingman, headborough, or other officer, shall wilfully neglect or refuse to execute any such warrant of any justice of the peace; or if any person appointed by such chief constable, constable, tythingman, headborough, or other officer, to provide and furnish any such carriage and man, shall wilfully neglect or refuse to provide the same; every such offender shall forfeit a sum not exceeding forty shillings, nor less than twenty shillings, to the use of the poor of the parish, tything, or place, where such offence shall be committed: and every such offence shall and may be heard and determined by two justices of the peace within the county, riding, or place, where such offence shall be committed; which justices shall, by warrant under their hands and seals, cause the said penalty to be levied by distress and sale of the offender's goods and chattels, rendering the overplus (if any) on demand, after deducting the charges of such distress and sale to such offender, upon whom such distress shall have been made as aforesaid.

Constables, &c. neglecting their duty in furnishing such carriages, forfeit not less than 20 s. nor more than 40 s. to the use of the poor;

to be levied by distress and sale.

Stat. 125. “ Provided always, and be it enacted, That neither the militia of this kingdom, nor any corps, detachment, or draught thereof, shall, on any account, be transported or carried out of the island of Great Britain.

No part of the militia may be transported out of Great Britain.

Stat. 126. “ And be it enacted, That all the powers given, and provisions made by this act, with respect to the county of *Northumberland*, and the militia thereof, shall in like manner take place, and be in force, with respect to the town of *Berwick upon Tweed*, except only as to the particulars herein expressed, and otherwise provided for; and that out of the persons returned in the lists for the said town, a number of private militia men shall be provided or chosen by lot to serve for the said town, in the same proportion with the private militia men appointed to serve for the other respective hundreds, wards, and other divisions, within the said county of *Northumberland*; and if persons can be found within the said town and liberties thereof, with such qualifications as are required for deputy lieutenants, and officers, within cities and towns which are counties of themselves, the chief magistrate of the said town of *Berwick upon Tweed* shall appoint five deputy lieutenants, and such number of officers of the militia as shall be proportionable to the number of militia men which the said town shall raise, as their quota, towards the militia of the county of *Northumberland*; and the said lieutenants and officers are hereby required to put the powers conferred by this act, for raising and training the militia, into execution, within the said town and liberties, subject to such penalties as are inflicted upon deputy lieutenants and officers of the militia for acting, not being duly qualified according to the directions of this act; and that the said militia shall join the militia of the county of *Northumberland*, and be exercised together, and shall then, and also in time of actual service, be deemed, part of the militia of the county of *Northumberland*, for the purpose aforesaid.

Provisions, &c. in the act respecting *Com. Northumberland*, are to take place with respect to *Berwick upon Tweed*, except where it is otherwise provided for; and the number of men to serve for the said town, is to be in proportion to the number appointed for the other hundreds, &c. within the county; and the chief magistrate is to appoint 5 deputy lieuts. if so many shall be found qualified, and

officer. proportionable to the quota of men; who are to carry the act into execution; subject however to the penalties of non-qualification; and the men are to join, and be exercised with the militia of the county, and be deemed part thereof.

When the number of men is settled and the *Ile of Wight* is to furnish the governor of the island is to appoint the officers; and he is to act as lords lieuts. of counties are empowered and required; and is to appoint 5 or more deputies; who are severally to be qualified, and act, as is prescribed with respect to deputy lieutenants and officers for *Wales*; and the militia is to be raised as in the *Com. Southampton*, and deemed a part thereof; and there to be

Sec. 127. " And whereas the ordering the militia in the *Ile of Wight*, has always been in the governor or lieutenant governor of the said island: and whereas, from the length of time since the militia thereof was raised, the raising the same in manner heretofore accustomed may be attended with many difficulties; be it enacted, That after the number of persons which the said island is to furnish to the militia of the county of *Southampton* shall have been appointed, as by this act is directed, by his majesty's lieutenant and the deputy lieutenants, or by the deputy lieutenants of the said county at large, the governor of the said island shall appoint the officers of the militia to be raised in the said island, and shall and is hereby impowered and required to act in the execution of this act, in the same manner as his majesty's lieutenants of counties are hereby impowered and required to act, and shall appoint five or more deputies to act with him, in and for the said island; which deputies and officers of the militia shall be qualified in the same manner, and are hereby impowered and required to act in the execution of this act in the same manner, and under the same directions, provisions, and penalties, as deputy lieutenants and officers of the militia, in the several counties within the dominion of *Wales*, are by this act subject to; and the militia of the said island shall be raised in the same manner as the militia of the county of *Southampton*, and shall be deemed a part of the militia of the said county: and after the same shall be raised, the said governor, lieutenant governor, and deputies, shall order and direct the training and exercising the said militia within the said island, in the same manner as his majesty's lieutenants and the deputy lieutenants are by this act authorized and directed to do in any county within that part of *Great Britain* called *England*; and the militia so raised within the said island, shall be continued and remain within the said island as an internal defence thereof.

and there to be trained and exercised in the same manner, and continue there as an internal defence.

All fines, penalties, and forfeitures, where not otherwise directed, are to be recovered, on proof upon oath of the offence before a justice for the county, &c. by distress and sale; and where sufficient distress cannot be had, the offender is to be committed for 3 months;

Sec. 128. " And be it enacted, That all fines, penalties, and forfeitures by this act imposed, the manner of the recovery whereof is not in this act particularly provided for, shall, on proof upon oath of the offence before any justice of the peace of the county, riding, or place, where the offence shall be committed, be levied by distress and sale of the offender's goods and chattels, by warrant under the hand and seal of such justice, rendering the overplus (if any) on demand, after deducting the charges of such distress and sale, to the offender upon whom such distress shall have been made; and where the goods and chattels of such offender shall not be sufficient to answer such distress, such justice is hereby required to commit such offender to the common gaol of the county, riding, or place, where the offence shall have been committed, for any time not exceeding three months: and all fines, penalties, and forfeitures, by this act imposed, the application whereof is not otherwise particularly provided for, shall be paid to the clerk of the regiment or battalion, and shall be made a common stock; and the said clerk shall give a particular account thereof, as it shall

shall arise, to the colonel or commanding officer of the regiment or battalion, who shall cause butts to be erected in some convenient place or places, and shall direct the clerk of the regiment or battalion to buy and provide, with some part of the money so arising, a proper quantity of gunpowder and ball, to be used at proper times by the militia men in shooting at marks, and to apply and dispose of such other part of the money aforesaid, as he shall think reasonable, in some prize or prizes to be given to such militia man or men as shall, by the commanding officer then present, be adjudged to be the best marksman or marksmen, and to apply the residue thereof to other contingencies relating to the regiment or battalion.

officer of the regiment ; and are to be applied in erecting butts, providing powder and ball, to the best marksmen, and to other contingencies of the regiment.

and where not otherwise directed, they are to be paid to the regimental clerk, and made a common stock, and be accounted for by him to the colonel or commanding officer and in prizes

Sec. 129. " And be it enacted, That in all cases when any person shall be committed to the house of correction by virtue of this act, he shall, during the time of such commitment, be kept to hard labour in such house of correction.

Where any person shall be committed to the house of correction, he is to be kept to hard labour there.

Sec. 130. " And be it enacted, That in all cases where his majesty's lieutenants, or the respective deputy lieutenants by them appointed, or his majesty's justices of the peace, are, by this act, required to examine, hear, and determine, all witnesses shall be examined upon oath ; which oath such lieutenants, deputy lieutenants, and justices, or any one of them, is and are hereby impowered to administer.

Lord lieuts. deputies, and justices, in all matters to be tried before them, impowered to examine the witnesses upon oath ;

Sec. 131. " And be it enacted, That no order or conviction made by any of his majesty's lieutenants, or by any three or more deputy lieutenants, or by any two deputy lieutenants together with any one justice of the peace, or by any one deputy lieutenant together with any two justices of the peace, or by any justice or justices of the peace, by virtue of this act, shall be removed by *certiorari* out of the county, riding, division, place, city, or town wherein such order was made, into any court, and that no writ or writs of *certiorari* shall supersede execution, or other proceedings, upon any such order so made in pursuance of this act ; but that execution, and other proceedings, shall and may be had and made thereupon, any such writ or writs, or allowance thereof, notwithstanding.

and no order. or conviction which shall be made by them shall be removed or superseded, by writ of *certiorari*.

Sec. 132. " Provided always, and be it further enacted, by the authority aforesaid, That where any parish shall lie in more counties or ridings than one, the inhabitants of such parish shall serve in the militia of that county or riding wherein the church belonging to such parish is situated ; and that such parish shall be deemed as part of that county, and shall be subject to the jurisdiction and authority of the deputy lieutenants, justices of the peace, and other officers of that county or riding, to all the intents and purposes of this act.

Where a parish shall be in more counties or ridings than one, the men shall serve in the militia of the county, &c. wherein the

parish church stands, and be subject to the same jurisdiction.

The inhabitants of Craike shall serve in the militia for the North riding of York, and be subject to the same jurisdiction.

Señ. 133. " And be it enacted, That the inhabitants of the constabulary of *Craike*, a parcel of the county of *Durham*, surrounded by the north riding county of *York*, shall serve in the militia for the said north riding; and the deputy lieutenants and justices of the peace for the said north riding, shall and are hereby impowered to act in the said constabulary.

The inhabitants of Maker parish shall serve and be trained with the militia of of Cornwall, and be deemed

Señ. 134. " And be it enacted, That the inhabitants of that part of the parish of *Maker*, that lies in the county of *Cornwall*, shall serve in, and be trained and exercised with, the militia of the county of *Cornwall*, and shall, to all intents and purposes, be deemed, taken, and accepted as part thereof.

and those of Wokingham, with the militia of Com. Berks;

Señ. 135. " And be it enacted, That the inhabitants of the town and parish of *Wokingham* shall serve in, and be trained and exercised with, the militia of the county of *Berks*.

of Filcy, to serve in that of the east riding of York;

Señ. 136. " And be it enacted, That the inhabitants of the township of *Filcy* shall serve in the militia of the east riding of the county of *York*.

of Threapwood, in that of Flint; and to be exercised with that of Worthenbury;

Señ. 137. " And be it enacted, That the inhabitants of *Threapwood* shall serve in the militia of the county of *Flint*, and shall be trained and exercised with the militia of the parish of *Worthenbury*, within the said county.

and of Saint Martin, called Stamford Baron, in that of Lincoln.

Señ. 138. " And be it enacted, That the inhabitants of and in the parish of *Saint Martin*, called *Stamford Baron*, in the suburbs of the borough and town of *Stamford* on the south side of the waters there, called *Welland*, shall serve in the militia of the county of *Lincoln*.

The tanners in Devon and Cornwall are to be under the lord warden of the stannaries.

Señ. 139. " And be it enacted, That nothing in this act contained shall extend to the tanners in the counties of *Devon* and *Cornwall*; but the lord warden of the stannaries for the time being, in pursuance of his majesty's commission in that behalf, and such as he shall commissionate and authorize under him, may and shall have and use the like powers, and array, assess, arm, muster, and exercise, the said tanners within the said counties, and either of them, as hath been heretofore used, and according to the ancient privileges and customs of the said stannaries.

Lieutenants for London are to list and levy the train bands, as heretofore.

Señ. 140. " And be it enacted, That his majesty's lieutenants who are or shall be commissioned for the militia of the city of *London*, may and shall continue to list and levy the train bands and auxiliaries of the said city, in manner as heretofore.

The constable of the Tower is to appoint dep. lieuts.

Señ. 141. " And whereas the militia of the *Tower Division*, in the county of *Middlesex*, commonly known by the name of *The Tower Hamlets*, is, and always has been, under the command of his majesty's constable of the *Tower*, or lieutenant of the *Tower Hamlets*, for the service and preservation of that royal fort; be it therefore enacted, That it shall be lawful for his majesty's said constable, or lieutenant, for the time being, from time

time to time to appoint his deputy lieutenants, and to give commissions and officers, to a proper number of officers to train and discipline the militia to be to train and discipline the militia of the raised within and for the said division or hamlets, pursuant to an act of the thirteenth and fourteenth years of the reign of king *Charles* the Second, intituled, *An act for ordering the forces of the several counties of this kingdom*, and to form the same into two regiments of eight companies each, in such manner as the said constable, or lieutenant, hath used to do; and also for defraying the necessary charges of trophies, and other incident expences of the militia of the same division or hamlets, it shall be lawful for his majesty's said constable, or lieutenant, to continue to raise, in every year, the proportion of a fourth part of one month's assessment of trophy money within the said division or hamlets, in such manner as he hath used to do by virtue and in pursuance of the said act of the thirteenth and fourteenth years of the reign of king *Charles* the Second.

Stat. 142. "And be it further enacted, That his majesty's said constable of the *Tower*, or lieutenant of the *Tower Hamlets*, shall appoint a treasurer of the said trophy money, for receiving and paying such monies as shall be levied by virtue of the said act of the thirteenth and fourteenth years of the reign of king *Charles* the Second; which said treasurer shall yearly account in writing and upon oath, for the same, to the said lieutenant, or his deputy lieutenants, or any three or more of them; which oath they shall have power to administer; and which accounts for the same shall be certified to the justices of the peace for the said division at their next general or quarter sessions; and that the said constable, or lieutenant, shall not issue out warrants for raising any trophy money, until the justices of the peace, or the major part of them, at such sessions, shall have examined, stated, and allowed, the accounts of the trophy money raised, levied, and collected, for the preceding year, and certified the same under the hands and seals of four or more of such justices, unless in case where it shall appear to such justices, that, by reason of the death of such treasurer, or otherwise, such accounts cannot be passed.

death of the treasurer, such accounts cannot be passed.

Stat. 143. "And be it enacted, That the lord warden of the cinque ports, two ancient towns and their members, and, in his absence, his lieutenant or lieutenants, may and shall put in execution within the said ports, towns, and members, all the powers and authorities given and granted by any former act or acts, and may and shall execute and perform all and every the things therein contained, in like manner as his majesty's respective lieutenants of counties, and their deputy lieutenants, may do; and may keep up and continue the usual number of soldiers in the said ports, towns, and members, unless he or they find cause to lessen the same; and the militia of the said ports, towns, and members, shall remain separate from the militia of the several counties within which the said ports, towns, and members, are situate; any thing herein contained to the contrary notwithstanding: and that it shall and may be lawful for the lord warden, or his lieutenant or lieutenants, in pursuance of orders from his majesty, his heirs, and successors, and in the manner prescribed by the militia

thereof is to remain separate from that of the counties wherein they are situate; and they may raise and draw out, in pursuance of orders from the king, conformable to the act of 13 & 14 Car.

II. the militia thereof, notwithstanding the pay advanced be not reimbursed; and provide the soldiers with a month's pay in hand; and may exercise the usual powers for arraying, assessing, arming, and exercising, &c. the men, and raising trophy money, &c.

and nothing in this act is to vacate any thing done in pursuance of the former acts; or prevent any proceedings commenced in pursuance thereof.

Where, in pursuance of the former acts, the militia has been raised, and precepts issued for returning lists, and proceedings had thereon, the dep. lieuts. and justices are to proceed, as those acts direct, in execution of all matters and things subsequent to

by an act made in thirteenth and fourteenth years of the reign of king Charles the Second, intituled, *An act for ordering the forces in the several counties of this kingdom*, notwithstanding one or more months pay advanced be not reimbursed, to raise and draw out the soldiers into actual service, and to cause the persons charged as by the said act, to provide their soldiers with pay in hand, not exceeding one month's pay, in such manner, as if all the pay advanced and provided had been reimbursed; and to use the like powers, and to array, assess, and arm, muster, and exercise the said soldiers, and to make assessments, and issue warrants for the assessments made or to be made for raising any trophy money, and for defraying the necessary charges of trophies, and other incident expences of the militia of the said ports, towns, and members, as hath been heretofore used, and according to their ancient privileges and customs; any thing in the said act to the contrary notwithstanding.

Sec. 144. "And be it enacted, That all former acts relating to the raising of the militia within that part of *Great Britain* called *England*, and the dominion of *Wales*, shall, from and after the passing this act, be, and are hereby repealed, except in such cases as are herein specially directed to be subject to the provisions of the said former acts, or any of them; and the militia raised by virtue of the said former acts, shall be subject to all the same provisions and regulations as the militia directed to be raised by virtue of this act are subjected to.

Sec. 145. "And be it enacted, That nothing in this act contained shall in any wise extend to annul or make void any thing already done in pursuance of the former acts relating to the militia forces, or any of them, or to prevent the compleating any proceedings already commenced in pursuance of the said acts.

Sec. 146. "And whereas in the several counties, ridings, or places, where the militia has been already raised, several precepts have issued for the returning lists of the names of several persons liable to serve in the militia, many of which lists have been returned, and several proceedings had thereon, in pursuance of the laws for the better ordering of the militia forces of that part of *Great Britain* called *England*: and whereas it is necessary that some provision should be made to impower the deputy lieutenants and justices of the peace in their respective subdivisions, and the justices of the peace in the said several counties, ridings, and divisions, in that part of *Great Britain* called *England*, to proceed on such lists, and other matters relative thereto; be it therefore enacted, That the said deputy lieutenants and justices of the peace may and shall continue to act and put in force the several acts of parliament made in the thirtieth, thirty-first, thirty-second, and thirty-third, years of the reign of his late majesty, and in the first year of the reign of his present majesty, relating to the better ordering of the militia forces, and the pay thereof

in that part of *Great Britain* called *England*, in all matters and things such precepts, subsequent to the precepts so issued, and the lists returned or to be returned thereon; and that the justices of the peace of the said several counties, ridings, and places, may and shall cause to be levied the fines, penalties, and forfeitures, already incurred, or which may be incurred, in pursuance of the said militia laws, as are in and by the said laws directed; any thing in this act to the contrary notwithstanding.

account as those laws direct.

Sec. 147. Provided always, and be it enacted, That if any suit or suits, action or actions, shall be brought or commenced against any person or persons for any thing done in pursuance of this act, the action or actions, suit or suits, shall be commenced within six calendar months after the fact committed, and not afterwards; and shall be laid in the county where such action or actions, suit or suits, did arise, and not elsewhere; and the defendant or defendants in such suit or suits, action or actions, to be brought, may plead the general issue, and give this act, and the special matter, in evidence: and if the jury shall find for the defendant or defendants in such suit or suits, action or actions; or if the plaintiff or plaintiffs shall be nonsuited, or discontinue his or their suit or suits, action or actions, after the defendant or defendants shall have appeared; or if, upon demurrer, judgment shall be given against the plaintiff or plaintiffs; the defendant or defendants shall have treble costs, and have the like remedy for the same as any defendant or defendants hath or have in other cases to recover costs by law.

Limitation of actions.

General issue.

Treble costs.

Sec. 148. "Provided always, and be it enacted by the authority of the said Majesty, That this act shall continue and be in force for the space of seven years, and from thence to the end of the then next session of parliament, and no longer.

This act to be in force for 7 years.

STAT. 4 Geo. 3. c. 17. [*A. D.* 1764, intituled] "*An act to explain and amend an act, passed in the second year of the reign of his present majesty, intituled, An act to explain, amend, and reduce into one act of parliament, the several laws now in being, relating to the raising and training the militia within that part of Great Britain called England.*"

"Whereas the laws now in force, for the raising and training the militia, within that part of *Great Britain* called *England*, are in some respects defective: and whereas frequent delays, and many difficulties have occurred in the execution of the acts now in force for raising and training the militia, from the manner in which the whole execution of the acts is made to depend in all counties, ridings, and places, where the militia has been or shall be raised, upon holding a general meeting, on either the last Tuesday in October, or the last Tuesday in May, in each year; and doubts have arisen, whether, in such case, any subsequent general meetings can now be called for the purposes of the said acts, unless there shall have been a previous general meeting on one of the days before specified; may it therefore please your majesty, that it may be enacted; and be it enacted by the king's most excellent majesty, by and with the advice

Preamble.

advice

advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That it shall and may be lawful for his majesty's lieutenant of every county, riding, and place, where the militia has been or shall be raised, together with any two or more deputy lieutenants, and on the death or removal, or in the absence of his majesty's lieutenant, any three or more deputy lieutenants, whenever and as often as they shall find necessary, to summon, or cause to be summoned, a general meeting, according to the directions of the act, passed in the second year of the reign of his present majesty, for summoning general meetings in counties where the militia has not been raised; which general meetings herein directed, shall have the same powers as if such general meetings had been held on the last *Tuesday* in *May*, or on the last *Tuesday* in *October*, in each year, in pursuance of the said act.

In counties where the militia has been or shall be raised, general meetings may be summoned in the same manner as in counties where the militia has not been raised, and shall have the same power as meetings held on the last *Tuesday* in *May*, or the last *Tuesday* in *October*.

In every county, &c. where the office of lord lieutenant is vacant his majesty to appoint 3 deputy lieutenants, to execute that office so far as relates to the acts for raising and training the militia.

Secl. 2. " And whereas the raising the militia has, in some counties, been delayed by the vacancy of lord lieutenants in particular counties, and it is essential to the good of the service, and the establishment of a militia, which, to be effectual, should be general, that such local difficulties should be removed for the future; be it therefore enacted, and it is hereby enacted, That in every county, riding, and place, where the office of lord lieutenant is, or shall be vacant, it shall and may be lawful for his majesty, his heirs, and successors, to appoint three persons out of the deputy lieutenants of any such county, riding, or place, to execute the office of lord lieutenant of such county, riding, or place, so far as the same relates to the executing the several powers and authorities vested in lieutenants, in and by the several acts of parliament for the raising and training the militia, during such vacancy.

No volunteer or substitute to be admitted and sworn, who shall not be 5 feet 4 inches high.

Secl. 3. " And whereas many inconveniencies have arisen in the service, from the want of some description of the men who shall be accepted as volunteers, offered by parishes as parochial substitutes, or of men tendered to serve as substitutes by persons chosen by ballot; be it enacted, That no such volunteer or substitute shall be admitted and sworn to serve in the militia who shall not be five feet four inches in height, and able and fit for service.

A person being inrolled to serve in the militia of one county, and who shall engage and be inrolled to serve in the militia of another county, in case such person shall not immediately pay such penalty, such justice of the peace shall, by warrant under his hand and seal, commit such person to the common gaol of the county, riding, or place, where he shall

Secl. 4. " And whereas it is become necessary to prevent the militia men of one county from inrolling themselves in the militia of another; be it therefore enacted, That if any person, after being inrolled in the militia of one county, riding, or place, shall, during such service, engage and be inrolled to serve in the militia of any other county, riding, or place, he shall, upon conviction thereof before any one justice of the peace of the county in which he shall last enter into the said militia, forfeit and pay any sum not exceeding the sum of ten pounds; and if of the peace shall, by warrant under his hand and seal, commit such person to the common gaol of the county, riding, or place, where he shall

shall have been so convicted, there to remain without bail or mainprize, be committed for any time not exceeding three months, or unless he shall sooner pay the penalty aforesaid. for any time not exceeding 3 months.

Sett. 5. " And whereas the provisions in the said act, passed in the second year of the reign of his present majesty, for reimbursing officers of parishes the monies by them expended for the relief of militia men, who on their march, or at the place where they shall be called out to annual exercise, shall, by sickness or otherwise, want such relief, have been found insufficient for the purposes thereby intended; be it therefore enacted, That in case any man serving in the militia shall, on the march, or at the place where he shall be called out to annual exercise, be disabled by sickness or otherwise, it shall and may be lawful for any one justice of the peace of the county, riding, or place, or any mayor, or chief magistrate of any city, town, or place, where such man shall then be, by warrant under his hand and seal, to order him such relief as he shall think reasonable; and the officers of the parish, tything, or place, where such militia man shall be so relieved, shall, upon producing an account of the expences occasioned thereby, allowed under the hand of a justice of the peace, to the treasurer of the county, riding, or place, for which such militia man shall serve, shall be reimbursed such expences by the treasurer of such county, out of the county stock, and such treasurer shall, upon producing such account allowed as aforesaid, be allowed the same in his accounts. A militia man on the march, or at the place of exercise, disabled by sickness, or otherwise, to be relieved by the officers of the parish where he shall then be, and parish officers to be reimbursed the expences occasioned thereby, out of the

county stock, upon producing accounts thereof allowed by a justice of the peace.

Sett. 6. " And whereas, as the laws for regulating the militia now stand, no power is given of punishing such militia men as shall, after having joined their corps, desert during the time of annual exercise, and not be taken till after the expiration of the time of such annual exercise, and consequently of the period now fixed for the continuance of martial law; be it therefore enacted, That if any militia man shall so offend, and not be apprehended during the time of such annual exercise, every such militia man, being thereof convicted upon oath, before one justice of the peace, of any county where such militia man shall be apprehended, shall incur the penalty, and be subject to the punishment, inflicted by the said act of the second year of his present majesty upon militia men not joining their corps. Militia men who after having joined their corps, shall desert, during the time of annual exercise, and shall not be taken till after the expiration of the time of annual exercise, shall incur the same penalty as militia men not joining their corps.

Sett. 7. " And whereas it would be very conducive to the preservation of order and discipline, during the time of annual exercise, of great convenience to the corporals and private militia men in the supplying them with necessaries, and of essential utility to their respective families, if the captains or commanding officers were enabled to stop a limited part of the daily pay of such corporals and private men when called out to annual exercise; be it therefore enacted, That it shall and may be lawful for every captain or commanding officer of the militia, to put the corporals A captain or commanding officer may

put corporals and private militia men of his company under stoppages, not exceeding six pence a day, for the purposes aforesaid: provided always, That every captain and commanding officer shall account with each corporal or private militia man for the said stoppages, before such corporal or private man shall be dismissed from the said annual exercise, having first deducted what shall have been laid out for them for necessaries and repair of arms damaged by their neglect.

before they are dismissed from annual exercise.

A drummer negligent in his duty, or disobedient to the orders of the adjutant, or other superior officer, to forfeit not exceeding 40s. if not immediately paid, the captain of the company to stop the pay of such drummer, to pay the penalty: the penalty to be applied as part of the common stock of the regiment or battalion.

Sett. 8. “ And whereas no powers are granted by the said act, passed in the second year of the reign of his present majesty, for punishing drummers for misbehaviour during the time the militia to which they belong is not called out to annual exercise (except by their being displaced by their captain) which defect in the law has been found inconvenient to the service of the militia; be it therefore enacted, That if any drummer shall be negligent in his duty, or disobedient to the orders of the adjutant, or other his superior officers, and be thereof convicted upon the oath of the adjutant or other superior officer, or other credible witness, before one or more justice or justices of the peace of the county in the militia of which such drummer serves, such drummer shall forfeit and pay any sum not exceeding forty shillings, at the discretion of such justice or justices; and if such drummer shall not immediately pay such penalty, it shall and may be lawful for the captain, or commanding officer of the company of militia to which such drummer shall belong, and he is hereby required to stop the pay of such drummer, until the same shall amount to the sum of money ascertained by such justice or justices, as the penalty inflicted upon such drummer; and the said captain, or commanding officer, shall pay the same to the clerk of the regiment or battalion, to be applied and accounted for, as part of the common stock of such regiment or battalion; and the receipt of the clerk for such sum shall be a discharge to the captain, or commanding officer, for the same; and the money so paid, shall be deemed as so much money paid to such drummer for his service in the militia.

Sett. 9. “ And whereas by the said act, passed in the second year of the reign of his present majesty, it is enacted, That in all counties and places where the militia has nor, or shall not be raised, by virtue of the several acts made for raising the militia forces, that the sum of five pounds shall be annually paid for and in lieu of every private man therein directed to be raised within each respective county, riding, and place; which said sum and sums of five pounds *per* man, the justices of the peace of each respective county, riding, and place, assembled at their general or quarter sessions, are directed to rate and assess on the county; and that the said sum and sums shall be rated and assessed in such and the same manner, and according to such and the same proportions, upon every town, parish, and place, within each respective county or riding, and shall be collected, received, levied, paid, and accounted for, by the persons making such collection, in such manner, and by such means, as the county rates have been usually,

usually, or may, by an act made in the twelfth year of the reign of his late majesty, intituled, *An act for the more easy assessing, collecting, and levying of county rates*, be assessed, collected, received, levied, paid, and accounted for: and whereas there are several cities, towns, and places, in many counties and ridings, which do not contribute to the payment of the said rate, called the *county rate*, by reason whereof doubts have arisen, whether such cities, towns, and places can be legally rated or assessed towards the payment of the said sum and sums of five pounds *per man*, in pursuance of the directions of the said act of the second year of the reign of his present majesty: and whereas it is just and reasonable, that all such cities, towns, and places, should bear an equal share and proportion of the said payment of five pounds *per man* with each county or riding within which such cities, towns, and places, may happen to lie; be it therefore enacted, That in all cases where the militia has not been raised, or shall not at any time hereafter be raised, for any county, or riding, within which any city, town, or place, shall not be rated to the said rate called the *County Rate*, the payment of the said sum of five pounds *per man*, upon the whole number of private militia men directed to be raised within every county or riding, shall be divided and apportioned between each respective county or riding, and each such respective city, town, and place within the same, as shall not contribute to the said rate, called the *County Rate*, in such proportion as the respective quotas paid to the land tax by each respective county or riding, and by each such respective city, town, and place, bear to each other, and the respective sum and sums so ascertained and apportioned shall be rated, levied, and paid, out of the rates for the relief of the poor, to be collected within each such respective city, town, and place, not rated to the said rate, called the *County Rate*, by such ways and means, and with such powers and regulations for levying, collecting, and keeping the same distinct, as are prescribed in the said act passed in the second year of his present majesty, for each respective county or riding; and the churchwardens and overseers of the poor of each such respective city, town, and place, shall, from time to time, pay over the same to the treasurer or treasurers of every county or riding within which any such city, town, and place as aforesaid lies, in order that the said treasurer or treasurers may pay over the same to the receiver general of the said county or riding, together with the proportion of the said sum of five pounds *per man*, directed to be rated, levied, and paid, by each county or riding, by the said act passed in the second year of the reign of his present majesty.

Where the militia shall not be raised for any county within which any city shall not be rated to the county rate, the payment of 5 l. *per man* shall be apportioned between such county and city as the respective quotas paid to the land tax bear to each other; and the sums so apportioned shall be paid out of the poor's rate collected in such city by the churchwardens and overseers of the poor, to the treasurer of the said sum of 5 l. to be paid by such county.

Sec. 10. " And be it further enacted, That in such cities, towns, and places, as are counties of themselves, and yet have no such rate or assessment as is called the *County Rate*, nor any powers or directions for rating, levying, or collecting the proportion of the said sum of five pounds *per man*, to be raised by the county to which the said cities, towns, or places are, by the said act passed in the second year of the reign of his present majesty,

The same method to be followed in such cities as are counties of themselves,

majesty, united for the purposes of the said act, the directions herein before given for rating, levying, and collecting the proportion of the said sum of five pounds *per man*, within such cities, towns, and places, as do not contribute to the county rate, shall be pursued and followed in all such cities, towns, or places, as are counties of themselves.

Where a town lies in two counties they are to contribute their quota, in lieu of raising the militia, for that county in which their church stands ; and the deficiencies of the other county rates, are to be made up by the county in general.

Sett. 11. " And whereas, in some parts of this kingdom there are towns which lie in two counties, and doubts have arisen, whether such towns are obliged to pay to both counties the sum of five pounds in lieu of every private militia man which shall not be raised by such counties ; be it therefore enacted by the authority aforesaid, That where any town lies in two counties, it shall be lawful for the said town to contribute their quota, for and in lieu of raising the militia, for that county only where the church of the said town is situate ; and the deficiencies of the other county rate, which the said town should have paid, shall be made up by the county in general, and not by the division or hundred where the said town is situated.

STAT. 5 Geo. 3. cap. 34. [*A. D.* 1765.] *made, among other purposes,*
" for punishing militia men for neglecting their duty."

Sett. 15. " And whereas great difficulties occur in recovering one of the penalties inflicted by an act passed in the second year of his present
AS 2. Geo. 3. majesty's reign, intituled, *An act to explain, amend, and reduce into one act of parliament, the several laws now in being, relating to the raising and training the militia within that part of Great Britain called England* ; which penalty is to enforce an attendance on the annual exercise, by punishing such militia men (not labouring under any infirmity incapacitating them) as shall not appear at the times and places of exercise appointed as by the said act is directed, which difficulties, if not timely removed, may prove detrimental to the service ; be it therefore enacted by the authority aforesaid, That if any militia man (not labouring under any infirmity incapacitating him,) shall not appear at the time and place of exercise appointed as aforesaid, and at which he ought to appear, in pursuance of the said act, every such militia man may, for every such offence, be apprehended, without any previous summons, by warrant from any one justice of the peace of the same county, riding, or place, or of any other county, riding, or place, within which such offender shall be found, upon oath made before such justice of the peace, that such militia man did not appear at the time and place appointed as aforesaid for exercise ; and upon producing also to the same justice a certificate, signed by the clerk of the proper subdivision meeting of the county wherein such militia man was inrolled, that it appears to him, the said clerk, by the roll in his custody, that the said defaulter is, or, at the time of such offence committed, was a militia man for the county wherein he ought to have appeared as aforesaid, mentioning in such certificate the date of his inrolment ; and also upon proof made of the

Militia man (not being incapacitated) neglecting to appear at the appointed time and place of exercise may be apprehended ; Oath being made before a justice of such default, and that he was inrolled, &c. and also proof made of the

upon

upon oath before the said justice of peace, of the hand-writing of the said clerk (both which oaths before mentioned the said justice is hereby im-
 powered to administer) and if any militia man so apprehended as afore-
 said, shall not prove to the satisfaction of the justice of peace, before
 whom he shall be brought on such warrant, that he the said militia man
 did, at the time appointed for such appearance, labour under some infir-
 mity incapacitating him, or that he had then changed his place of abode,
 and removed upon such notice and certificate as in the said act is for that
 purpose directed, into the subdivision wherein he shall be dwelling at the
 time of his being so apprehended; or that he, at the time of such default of
 appearance, was inrolled also to serve in the militia of some other county,
 riding, or place, and hath thereby forfeited, and upon conviction thereof
 actually paid the penalty of ten pounds inflicted for that offence by an
 act passed in the fourth year of his present majesty's reign, to explain and
 amend the above mentioned act, he the said defaulter (not making satis-
 factory proof as aforesaid of one or other of the said three causes of excuse)
 shall stand immediately convicted of his said offence by the justice of peace
 before whom he shall be so brought (whether such justice be of the same
 county, riding, or place for which such militia man is or was inrolled to
 serve, or of any other county, riding, or place) and the said justice of the
 peace shall then require and demand of such offender the immediate pay-
 ment of the said penalty; and upon refusal or neglect to make such im-
 mediate payment into the hands of the said justice, or of such person as
 he shall then direct, for the use of the regiment or battalion of militia
 wherein such defaulter is or was inrolled, to serve as part of the common
 stock of such regiment or battalion, the justice of peace before whom
 such militia man shall be so convicted shall, by warrant, commit him to
 the common gaol of the county, riding, or place, where he shall be so
 convicted, there to remain without bail or mainprize for the space of six
 months, or until he shall have paid the said penalty of twenty pounds.

hand writing
of the clerk;
and if he shall
not make sa-
tisfactory
proof of one
or other of the
three causes
of excuse here
allowed,

he shall forfeit
10l.

and if not
paid forth-
with, he shall
be committed
for 6 months.

Sec. 16. " And to obviate any difficulties which may otherwise arise in
 carrying into execution a clause in the said act passed in the fourth year
 of his present majesty's reign, whereby the like penalty and punishment
 are inflicted on militia men who, after having joined their corps, shall de-
 sert during the time of annual exercise, and shall not be taken till after
 the time thereof is expired, as are, by the above mentioned act of the
 second year of the said reign, inflicted on militia men neglecting to ap-
 pear; be it enacted by the authority aforesaid, That one justice of
 the peace in any county, riding, or place, wherein such deserter shall be
 found, may proceed against such deserter in the same manner, and exe-
 cute the like powers in that case as are herein before given in the case of
 militia men not appearing at the time and place appointed for annual
 exercise.

Justice may
proceed a-
gainst desert-
ers in like
manner, as
against militia
men neglect-
ing to appear

at the appointed time and place of annual exercise.

STAT. 5 Geo. 3, c. 36. [A. D. 1765, intituled] "*An act to explain, amend, and enforce, the several laws now in being relating to the raising and training the militia within that part of Great Britain called England.*"

Preamble, re-
citing clause
in act 2
Geo. 3.

The year
with respect
to certificates
to be made
by lieuts. and
dep. lieuts.
of counties,
the militia
whereof has
not been duly
raised, is to
end on the 2d
Tuesday in
May in every
year; and the
certificates to
be made to
the quarter
sessions next
after; toge-
ther with the
amount of the
sums to be raised.

Where the
lieut. of any
county shall

"Whereas by an act of parliament made in the second year of his present majesty's reign, intituled, *An act to explain, amend, and reduce into one act of parliament, the several laws now in being relating to the raising and training the militia within that part of Great Britain called England*, it is enacted, That in all counties and places where the militia had not been raised by virtue or in pursuance of the former acts for that purpose, or by virtue or in pursuance of the said act, the sum of five pounds should be annually paid, for and in lieu of every private militia man therein mentioned to be raised within the same; and that his majesty's lieutenant of every such county and place, or any three or more deputy lieutenants, at the expiration of every year in which the militia for such county and place shall not be raised, shall, from year to year, certify the same in writing under his or their hands; and also the whole amount of the several sums of five pounds *per* man, to be raised on such county not raising the militia as aforesaid, to the justices of the peace, at their general or quarter sessions next held, after the full end and accomplishment of the said year, for such respective county or place: and whereas doubts have arisen, whether such lieutenants are compellable to make such certificates according to the intent and meaning of the said act, and also at what time each respective year ends or is accomplished; for remedy whereof, be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in parliament assembled, and by the authority of the same, That from and after the passing of this act, every year, with respect to the certificate herein after directed to be made by his majesty's lieutenants, or the deputy lieutenants, of each respective county, riding, or place, not raising the militia, shall be deemed and taken to end and be accomplished on the second *Tuesday in May* in each respective year; and his majesty's lieutenants of every county, riding, and place wherein the militia shall not have been raised, or shall not continue to be raised pursuant to, and by virtue of, the several acts of parliament for raising and training the militia of this kingdom, shall, and they, and each and every of them, is and are hereby required to certify in writing under his and their hand and hands, yearly and every year, to the justices of the peace of each respective county, riding, and place, at their general or quarter sessions which shall be next holden after the second *Tuesday in May* in each year, that the militia has not been raised for such county or place for the preceding year; and also the whole amount of the several sums of five pounds *per* man to be raised on such county, riding, or place, as aforesaid.

SECT. 2. "And whereas it may happen that some of his majesty's lieutenants may be in parts beyond the seas, and thereby be incapable of certifying

rifying in the manner directed by the said recited act and this act; be it be beyond therefore further enacted by the authority aforesaid, That in case any of seas, he is to his majesty's lieutenants shall be in parts beyond the seas, such lieutenants, and each and every of them, is and are hereby required, by writing under their respective hands and seals, to appoint three or more deputy lieutenants to certify as aforesaid; and such deputy lieutenants, or some one or more of them, for each respective county, riding, and place, is and are hereby required to certify the same accordingly, to the justices of the peace assembled at their general or quarter sessions as aforesaid.

Sett. 3. " And whereas in some counties there may happen to be no lieutenants, by means whereof the several laws now in being, for raising and training the militia, cannot be carried into execution; for remedy whereof, be it further enacted by the authority aforesaid, That in such counties, ridings, or places, as may happen to have no lieutenant, three or more of the deputy lieutenants in such county, riding, or place, to be nominated and appointed by his majesty's sign manual, are hereby authorized and empowered to proceed and do every act and acts that are necessary for the carrying into execution the several powers of the said acts of the second and fourth years of his present majesty's reign, and of this act.

Sett. 4. " And be it further enacted by the authority aforesaid, That in case any of his majesty's lieutenants shall be in parts beyond the seas, and no deputy lieutenants shall be appointed to certify as aforesaid for any county, riding, or place, the clerk of the peace for such county, riding, or place, shall, and he is hereby required to certify as aforesaid to the justices of the peace at their general quarter sessions assembled; and the said justices of the peace are hereby required to proceed on such certificate of the clerk of the peace, in the same manner as if such certificate had been made by his majesty's lieutenant in manner aforesaid.

Sett. 5. " And whereas by an act made in the fourth year of the reign of his present majesty, intituled, *An act to explain and amend an act passed in the second year of the reign of his present majesty, intituled, An act to explain, amend, and reduce into one act of parliament, the several laws now in being, relating to raising and training the militia within that part of Great Britain called England*; it is enacted, That in all cases where the militia had not been raised, or should not at any time thereafter continue to be raised, for any county or riding, within which any city, town, or place, should not be rated to the rate called *The county rate*, the payment of the said sum of five pounds *per* man, upon the number of private militia men directed to be raised within every county or riding, should be divided and apportioned between each respective county and riding, and each such respective city, town, and place, within the same, and should be paid in the manner directed by the said act; and whereas doubts have arisen about the method of enforcing the payment of such sum and sums of money, as is and are in and by the said act of the fourth year of his present majesty directed to be paid by such cities, towns, and places, as are not rated to the said rate called *The county rate*; for remedy whereof, be it further enacted by the authority aforesaid, That if any sum or sums

be beyond seas, he is to appoint three or more deputy lieutenants, who are to certify accordingly.

In counties, &c. where there shall be no lieutenant, three or more deputy lieutenants appointed under the royal sign manual, are to carry the recited acts into execution.

Where the lieutenant shall be beyond seas, and no deputy lieutenants appointed, the clerk of the peace is to certify.

Clause in act 4 Geo. 3.

Where the sums payable

by virtue of the recited act, by any city or place, not rated to the county rate, shall not be paid by 10 Sept. yearly, to the treasurer of the county, the justices at their quarter sessions are to issue an order to the parish overseers to certify to the Xmas quarter session their respective quota's to the land tax; and according thereto, a bench warrant is to be issued, for levying the sum on the churchwardens and overseers, who are to be reimbursed the same in like manner as the poor rates.

Where any person inrolled in the militia shall inlist in his majesty's other forces, the overseer of the parish is to acquaint the adjutant therewith; who is to apply to a justice for a warrant, and send

of money, which ought to be paid by any such city, town, or place, not rated to the county rate as aforesaid, shall not be paid to the treasurer of the respective county, riding, or place, before the tenth day of *September*, in every year, according to the true intent and meaning of the said act of the fourth year of his present majesty's reign, and of this act, the justices of the peace for such county, riding, or place, shall, and they are hereby required, at the next *Michaelmas* quarter sessions, to issue out an order to the overseers of the poor of each respective parish or place, within each city, town, or place, not rated to the county rate as aforesaid, requiring such overseers to certify and return to the said justices at their next *Christmas* quarter sessions, the several *Quota's* that each parish or place (within such city, town, or place, not paying to the county rate as aforesaid) pays to the land tax for that year; and such overseers of the poor are hereby required to make such certificate and return accordingly; and upon such certificate and return being made, the said justices so assembled at their *Christmas* quarter sessions, are hereby authorized and required (by their bench warrant, directed to any constable or tythingman, within such respective parishes and places) to cause the same to be levied by distress and sale of the goods and chattels of any churchwarden or churchwardens, or any overseer or overseers of the poor of each and every parish or place within such city, town, or place, not paying to the county rate as aforesaid, rendering the overplus (if any) to the owners of such goods and chattels, after such sum and sums of money, together with the reasonable charges attending such distress and sale, shall be fully paid and satisfied; and such churchwardens and overseers of the poor shall be reimbursed the sum and sums of money so levied on them respectively, by the same ways and means as overseers of the poor are reimbursed the money by them expended for the relief of the poor by any laws now in being.

Sec. 6. " And whereas it frequently happens, that persons inrolled to serve in the militia, inlist themselves to serve in his majesty's other forces, before the time of their service in the militia is expired, to the great prejudice of both services; and it is found by experience, that the provisions in the said act of the second year of his present majesty's reign have been ineffectual for preventing this practice; for remedy whereof, be it further enacted, by the authority aforesaid, That from and after the passing of this act, if any person who is sworn and inrolled to serve in the militia, shall presume to inlist in his majesty's other forces, contrary to the true intent and meaning of the said act, and of this act, the overseer of the poor of the parish or place for which such man serves, shall, as soon as it comes to his knowledge, acquaint the adjutant of the regiment to which such militia man belongs, with such inlisting; and such adjutant shall forthwith apply to one of his majesty's justices of the peace; and it shall and may be lawful for such justice of the peace for the county, riding, or place, for which any person so inlisted was inrolled to serve in the militia as aforesaid, to issue his warrant to apprehend such militia man; and such adjutant is hereby empowered to send any serjeant or serjeants, drummer or

or drummers, belonging to such militia, to search for and apprehend, by virtue of such warrant, any militia man so enlisted as aforesaid; and it shall and may be lawful for any of his majesty's justices of the peace for any county, riding, or place, where any such militia man shall or may be found, to indorse such warrant (upon application made to him for that purpose) and to cause such militia man to be apprehended and brought before him, or some other justice of the peace for the county, riding, or place, where such militia man shall be apprehended: and if it shall appear upon oath, (which oath such justice is hereby empowered to administer) to the justice before whom such person shall be brought, that such person was enrolled to serve in the militia at the time of his enlisting to serve in his majesty's other forces as aforesaid, and did not acquaint the officer enlisting him therewith, such justice is hereby required, by warrant under his hand and seal, to commit the person so offending to the house of correction of and belonging to the county, riding, or place, where such militia man shall be so apprehended, there to be kept to hard labour for any time not exceeding three months; and such enlisting shall be, and the same is hereby declared to be, null and void; unless the officer with whom such person shall have so enlisted shall, within the space of twenty days, pay to the overseer or overseers of the poor of the parish or place for which such militia man served, the sum of five pounds; which said sum of five pounds shall be applied in the same manner as the money directed to be paid for militia men so enlisting as aforesaid is, by the said act of the second year of his present majesty's reign, directed to be applied."

in pursuit of the offender; and the warrant may be backed by any other justice:

and if it appear that the officer enlisting was not acquainted with such enrollment, the offender is to be committed to hard labour for 3 months, and the enlisting is void;

unless the officer pay 5*l.* to the overseer within 20 days, to be applied as by act 2 Geo 3, is directed.

STAT. 6 Geo. 3, c. 30. [A. D. 1765.] made, among other purposes, "for explaining, amending, and rendering more effectual, several acts of parliament passed in the second, fourth and fifth years of the reign of his present majesty, relating to the raising and training the militia within that part of Great Britain called England."

SECT. 19. "And whereas by an act made in the second year of his present majesty's reign, intituled, *An act to explain, amend, and reduce into one act of parliament, the several laws now in being relating to the raising and training the militia, within that part of Great Britain called England*, it is enacted, That in all counties and places where the militia shall not have been raised in pursuance of the former acts relating thereto, and where it should not be raised in pursuance of the said act, the sum of five pounds should be annually paid, in lieu of every private man to be raised within the same; and his majesty's lieutenant of every such county, riding, or place, or three or more deputy lieutenants, at the expiration of every year in which such militia should not have been raised, from and after passing the said act, should, from year to year, certify the same in writing under his or their hands, and also the whole amount of the several sums of five pounds *per* man, to be raised on such county, to the justices at their general quarter sessions next held after the end of the said year; and

Recital of clauses in act 2 Geo. 3.

that the said justices should thereupon forthwith rate and assess on such county, riding, or place, the sums mentioned in such certificate; the same to be assessed, collected, levied, paid, and accounted for, in the same manner, in all respects, as the county rates are, by an act of the twelfth year of the reign of his late majesty king *George* the Second, or any other act or acts of parliament, to be rated, assessed, collected; levied, paid, and accounted for; and that the said rates should be paid by the treasurer of such county to the receiver general thereof, whose receipt should be a sufficient discharge for such payment: and whereas by another

Act 4 Geo. 3. act made in the fourth year of the reign of his present majesty, intituled; *An act to explain and amend an act passed in the second year of the reign of his present majesty, intituled, An act to explain, amend, and reduce into one act of parliament, the several laws now in being relating to the raising and training the militia within that part of Great Britain called England*; it is enacted, That where the militia had not been raised, or should not be raised, for any county or riding within which any city, or town, or place, shall not be rated to the county rate, the said payment of five pounds *per* man upon the whole number of private men, to be directed to be raised within any county or riding, should be apportioned between such county, city, town, or place, in the proportion their respective quota's paid to the land tax bear to each other: and that the sums so apportioned should be paid out of the poors rate collected within such city, town, or place, in manner prescribed by the said acts of the second year of his said majesty's reign, by the churchwardens and overseers of the poor, to the treasurer of the county, who is to pay over the same to the receiver general thereof, together with the proportion of the said sum of five pounds *per* man, to be paid by such county, riding, or place: and whereas by another act made in the fifth year of his present majesty's reign, intituled, *An act to explain, amend, and enforce, the several laws now in being relating to the raising and training the militia within that part of Great Britain called England*, it is enacted, That the lieutenants of every county, riding, or place, wherein the militia should not have been raised, or should not continue to be raised, in pursuance of the several acts for raising and training the militia, should certify under their hands yearly, to the justices at their general quarter sessions to be held next after the second *Tuesday* in *May* in each year, that the militia had not been raised for such county or place the preceding year, and the whole amount of the several sums of five pounds *per* man, to be raised on such county or place; and in that case, of the absence of his majesty's lieutenant in parts beyond the seas, three or more deputy lieutenants should be appointed to certify as aforesaid; and if there should be no lieutenant, then three or more deputy lieutenants to be appointed by his majesty's sign manual, should be authorized to proceed in the execution of the said acts; and in case his majesty's lieutenant should be beyond the seas, and no deputy lieutenants should be appointed to certify as aforesaid, then the clerk of the peace for each county, riding, or place, should make such certificate as aforesaid; and the said act contains several directions for enforcing the payment

and act 5
Geo. 3.

payment of the said five pounds *per* man, by such counties or places where the militia have not been raised, or shall not continue to be raised, in pursuance of the said acts: and whereas the said several acts have been found defective and ineffectual, and, notwithstanding the direction therein, several of the counties, within that part of *Great Britain* called *England*, have neither raised any militia, nor paid the said five pounds *per* man *per annum*, according to the directions of the said several acts, whereby they avoid contributing equally to the support of government with such counties as have raised and trained the militia in compliance with the directions of the said acts: and whereas it is just and reasonable that all his majesty's subjects should contribute equally to the support of his majesty's government, and the defence of these kingdoms; be it therefore enacted by the authority aforesaid, That so much of the said several in part recited acts as directs the said certificates to be made by his majesty's lieutenants, or deputy lieutenants, or clerks of the peace, where the militia hath not been raised in pursuance of the said acts, and the time of making such certificate, shall be, and the same is hereby declared to be, repealed.

So much of the recited acts, as directs certificates to be made by the lieutenants, dep. lieuts. or clerks of the peace where the

militia hath not been raised, &c. is repealed.

Sec. 20. "And be it further enacted by the authority aforesaid, That his majesty's lieutenant, or three deputy lieutenants, for every county, riding, or place, within that part of *Great Britain* called *England*, where the militia has been or shall have been raised, shall yearly and every year, on or before the twenty-fifth day of *December*, certify to the clerk of the peace of every county, riding, or place respectively, that the militia of such county, riding, or place, hath been raised; and when and at what time the same was first raised; the number and rank of officers, and the number of private men of the militia, in the year when such certificate is made; and the respective times of such militia being trained and exercised in the year in which such certificate is made; which certificate shall be by the clerk of the peace, who shall receive the same, delivered to the justices of the peace at their general quarter sessions to be held next after the twenty-fifth day of *December* in every year, on the day on which such sessions shall be opened; and shall file the same amongst the records of such sessions, so that the true state of the militia in each county may appear.

Where the militia has been, or shall be raised, the lieuts. or dep. lieuts. are to certify the same yearly to the clerks of the peace, with such other particulars as are here mentioned; and the clerks are to deliver the same to the justices at their general quarter sessions, and file

them among the records of such sessions:

Sec. 21. "Provided always, and be it further enacted, That in every county, riding, or place, wherein no such certificate from his majesty's lieutenant, or three deputy lieutenants, shall be delivered to the clerk of the peace as aforesaid, that the clerk of the peace of every such county, riding, or place, shall, and is hereby required, at the general quarter sessions of the peace to be held next after the twenty-fifth day of *December* in such year, to certify under his hand and seal, to the justices of the peace so assembled at their said general quarter sessions, on the day such sessions shall be opened, that he hath not received from his majesty's lieutenant of the said county, riding, or place, or any three deputy lieute-

and where no such certificate shall be delivered from the lieut. or dep. lieuts. the clerks of the peace are to certify the same to the said sessions,

and file such
certificates;

nants thereof, any such certificate as is herein before directed to be by them made; and such clerk of the peace is hereby directed to file such certificate amongst the records of such sessions.

and the jus-
tices are there-
upon to assess
5l. per man
upon such
county or
place,

to be levied
and account-
ed for as the
county rates,
according to
act 12 Geo. II.
or Acts 2. 4.
& 5 Geo. III.

the said pay-
ment to be in
full discharge
for neglect of
not raising
and training
the militia.
Treasurer of
the county to
pay the money
to the receiver
general;

who is to cer-
tify the re-
ceipt thereof
to the treasu-
ry, and pay
over the mo-
ney into the
exchequer.

No fee to be
given for mo-
ney paid to the
receiver gene-
ral, or into the
exchequer or
issued there-
out.

Clerks of the
peace are to
transmit to
the treasury,

Sett. 22. " And it is hereby enacted, That in every county, riding, and place, in which no such certificate shall be made by his majesty's lieutenant, or three deputy lieutenants, in manner herein before directed, and the same shall be certified by the clerk of the peace as aforesaid, the justices of the peace of every such county, riding, or place, shall, and they are hereby required at their said general quarter session of the peace to be held next after the twenty fifth day of *December* in every year, to rate and assess the sum of five pounds *per* man upon such county, riding, or place, in such and the same manner according to such and the same proportions upon every town, parish, and place, within each respective county, riding, or place, to be collected, levied, received, and accounted for, in such manner, and by such means, as the county rates have been usually, or may, by an act made in the twelfth year of the reign of his late majesty king *George the Second*, intituled, *An act for the more easy assessing, collecting, and levying, the county rates*; or by the acts of the second, fourth, and fifth years of his present majesty's reign, for explaining, amending, and enforcing, the several laws relating to the raising and training the militia within that part of *Great Britain* called *England*, be assessed, collected, levied, received, and accounted for; which said payment of five pounds *per* man shall be, and is hereby declared to be, in full discharge for the neglect and failure of not having raised and trained the militia for such county, riding, or place, for the year then next preceding; and the treasurer or treasurers of the county, riding, or place, who shall receive the said five pounds *per* man, is and are hereby required to pay the same to the receiver general of the land tax for such county, riding, or place, within one calendar month after he or they shall have received the same; and the respective receivers general of the land tax shall give a receipt for the same to the person paying such money, whose receipt shall be a sufficient discharge for such payment; and shall, within ten days after the receipt of such sum and sums of money, certify such receipt to the lord high treasurer, or the lords commissioners of his majesty's treasury for the time being, and shall pay the same into the receipt of his majesty's exchequer, and in the same manner as he is required to pay in the taxes or duties, commonly called *The land tax*.

Sett. 23. " Provided always, and be it further enacted by the authority aforesaid, That no fee or gratuity whatsoever shall be given or paid for or upon account of any warrant which shall be made out for any sum of money which shall be received by such receiver general, or paid into his majesty's exchequer, or issued thereout, in relation to, or in pursuance of, this act.

Sett. 24. " And be it further enacted by the authority aforesaid, That such clerks of the peace of each respective county, riding, or place, shall, and they are hereby required, within fourteen days next after the general quarter sessions of the peace to be held after the twenty-fifth day of *De-*

ember yearly, to transmit to the lord high treasurer, or the commissioners and receivers of his majesty's treasury, for the time being, and also to the receiver general of the land tax for such county, riding, or place, a copy, signed by general, copies of the such clerk of the peace, of every certificate which shall have been delivered in pursuance of this act; and in case no such certificate shall have been delivered in, then such clerks of the peace shall certify to the lord high treasurer, or to the commissioners of his majesty's treasury, and also to such receiver general, that no such certificate from his majesty's lieutenant, or any three deputy lieutenants, hath been received by him, and that he hath certified the same to the justices of such general quarter sessions; and shall also certify what proceedings have been had at such general quarter sessions, in relation to the assessing and rating the said sum of five pounds *per man* where the militia shall not have been raised. certificates delivered in pursuance of this act; and where none such are delivered, are to certify the same accordingly; together with the proceedings of the sessions, in relation to assessing the penalty.

Seet. 25. " And be it further enacted by the authority aforesaid, That if any clerk of the peace shall refuse or neglect to receive, deliver, file, make, record, or transmit, such certificates as aforesaid, or any of them, according to the true intent and meaning of this act; every such clerk of the peace so offending, shall, for every such offence, forfeit and pay the sum of five hundred pounds, to any person who shall inform or sue for the same in any of his majesty's courts of record at *Westminster*, or the courts of great sessions in the principality of *Wales*, or the courts of the counties palatine of *Chester*, *Lancaster*, and *Durham*; wherein no *essoins*, protection, wager of law, nor more than one imparlance, shall be allowed; and shall also forfeit his office, and shall be rendered incapable of having, receiving, or holding, such office for the future, or any other place or office of trust, civil or military, under the government. Clerk of the peace neglecting his duty, forfeits the 500l. and his office, and is disabled.

Seet. 26. " And be it further enacted by the authority aforesaid, That in case there shall be any failure of raising or paying the several sums of money charged by this or the said former acts upon any county, riding, or place, where the militia shall not have been raised; the receiver general of such county, riding, or place, respectively, shall, on or before the twenty-fourth day of *June* in every year, certify under his hand to the barons of the court of exchequer each particular county, riding, division, or place, where such failure of payment hath happened; whereupon the said court of exchequer shall forthwith award the proper process to issue against the treasurer or treasurers of such county, riding, division, or place, where such failure shall have happened, in the same manner as any person or persons is or are liable to process for failure of payment of the rates and duties commonly called *The land tax*, for paying the said sum of five pounds *per man*; which said sum every such treasurer and treasurers is and are hereby directed and required to pay into the receipt of his majesty's exchequer, out of the county stock then in his, her, or their hands; and if he or they shall not then have sufficient for that purpose, out of the first money which shall come to his or their hands of the said county stock; and the auditor of his majesty's exchequer, into whose office and the audi-

ter is to give
a receipt for
the same.

office such sum or sums shall be paid, pursuant to the directions of this act, shall, and is hereby required to give to such treasurer or treasurers, or other person or persons paying the same on his or their behalf, a receipt for the same signed by such auditor; which receipt so signed shall be, and is hereby enacted to be, a sufficient discharge to such county, riding, division, or place, for such sum or sums of money so paid into the receipt of his majesty's exchequer.

Solicitor to
the treasury is
to prosecute
to effect trea-
surers making
default.

Sett. 27. " And be it further enacted, That the solicitor to the lord high treasurer, or to the commissioners of his majesty's treasury for the time being, shall, and he is hereby directed and required, with all due diligence, to prosecute with effect such treasurer or treasurers as shall make default in payment as aforesaid.

Justices at
their general
quarter ses-
sions are to
assess a sum
sufficient for
reimbursing
the treasurer.

Sett. 28. " And be it further enacted by the authority aforesaid, That the justices of the peace for such county, riding, or division, at their next general quarter sessions to be holden after any such payment made by any treasurer or treasurers as aforesaid, shall, and they are hereby required, to assess, and cause to be levied, a sufficient sum of money to reimburse such treasurer or treasurers all such sum or sums of money as he or they shall have paid on such account; to be assessed, collected, and levied, in the same manner as other county rates are directed to be assessed, collected, and levied.

The assess-
ments to be
made accord-
ing to the
provisions in
the act of
4 Geo. III.

Sett. 29. " Provided always, and it is hereby enacted, That the justices of the peace for such county, riding, or division, at their said general quarter sessions, shall, and are hereby impowered, to assess and levy, on every city, town, and place, which is not contributory to, or doth not pay to, the county rates of such county, riding, or division respectively, such proportion of the money so paid by such treasurer or treasurers in manner herein directed, according to the provisions and directions of an act made in the fourth year of his present majesty's reign, for explaining and enforcing the several laws now in being relating to the raising and training the militia for and in that part of *Great Britain* called *England*.

The money
paid into the
exchequer, to
be kept sepa-
rate and apart
from all other
monies;
and to be ap-
plied as is di-
rected by act
2 Geo. III.

Sett. 30. " And be it further enacted by the authority aforesaid, That all such sum or sums of money as shall be raised and paid into his majesty's exchequer at *Westminster*, in pursuance of and by virtue of this act, and in manner herein before directed, shall be kept separate and apart from all other monies; and shall be paid, applied, and disposed of, in such manner as is directed in and by an act of the second year of his present majesty's reign, for explaining, amending, and reducing into one act of parliament, the several laws then in being, relating to the raising and training the militia within that part of *Great Britain* called *England*.

Miller.

STAT. made during the reigns of king *Hen. 3*, king *Edw. 1*, or king *Edw. 2*, but uncertain when, or in which of their times. *Cap. 4*. [intituled] “*How toll at a mill shall be taken.*”

“The toll of a mill shall be taken according to the custom of the land, and according to the strength of the water-course, either to the twentieth or four and twentieth corn. (2) And the measure whereby the toll must be taken shall be agreeable to the king’s measure, and toll shall be taken by the rase, and not by the heap or cantel. (3) And in case that the fermors find the millers their necessities, they shall take nothing besides their due toll; and if they do otherwise, they shall be grievously punished.”

By *Holt, Ch. J.* the toll of a mill must be regulated by custom; and if the miller takes more than the custom warrants, it is extortion: but if it is a new mill, there the miller is not restrained to any certain toll; but the persons who will have their corn ground there, must comply with the miller’s demands; and whatsoever he takes, it is not extortion, because it is the voluntary agreement of the parties. *Lord Raym. Rep. 149.*

In an action on the case for erecting a mill, the lord declared upon a custom for all the inhabitants to grind at his mill, and that the defendant had built a mill there contrary to the custom; and this was adjudged a good custom: and suit to a mill may be by reason of tenure or service, and also by custom, and so may well bind strangers. *2 Bulstr. 195.*

And a new-erected house within the precincts is within the custom of multure; and none may grind elsewhere but in case of excessive toll, or that the grist cannot be ground in convenient time. *Hard. 177.*

An abbot had a mill within the king’s manor, at which all the inhabitants were bound by custom to grind their corn, &c. the king granted the manor over, and the mill came afterwards to the crown by the dissolution of the abbey, and the king granted it among other things in fee farm; and the tenants and inhabitants were decreed to grind there, as if it were a prerogative mill, and appertaining to the king’s manor, at which, of common right, all the tenants of the manor ought to grind their corn, and by custom all the inhabitants. And this was decreed on view of divers precedents; but none of the precedents were in point, to wit, of a mill *in gross*, which never was appertaining to the king’s manor, or originally in the king. *Hard. 21.*

A mill was erected near to a manor of the king’s, in which were mills; the court would not decree it to be demolished; and they doubted if a mill not within the king’s manor might be demolished where there is no tenure or custom, whereby the inhabitants are obliged to grind at the king’s mill. *Hard. 184.*

Misdemeanor.

It has been resolved, that even those who have the possession of goods by the delivery of the party may be guilty of felony by taking away part thereof with an intent to steal it; as if a carrier open a pack, and take out part of the goods, or a weaver who has received silk to work, or a miller who has corn to grind, take out part with an intent to steal it; in which cases it may not only be said that such possession of a part distinct from the whole was gained by wrong, and not delivered by the owner, but also that it was obtained basely, fraudulently, and clandestinely, in hopes to prevent its being discovered at all, or fixed upon any one when discovered. 1 *Hawk.* 90.

The defendant being a miller was indicted for *changing* corn delivered to him to be ground, and giving bad corn instead of it. It was moved to quash it, because only a private cheat, and not of a public nature. But it was answered, that being a cheat in the way of trade, it concerned the publick, and therefore was indictable. And the court was unanimous not to quash it. 1 *Seff. ca.* 217.

Misdemeanor.

THIS word, in its usual acceptation, is applied to all those crimes and offences, for which the law has not provided a particular name; and they may be punished according to the degrees of the offence, by fine, or imprisonment, or both. *Barlow.*

By *Stat. 29 Geo. 2, c. 30, sect. 2, 3*, persons suspected of stealing lead, &c. and not giving a satisfactory account how they came by it, are declared guilty of misdemeanors. See *Larceny*, page 20.

Mute.

MUTE, (*Mutus*) Speechless, dumb, or that refuses to speak. A prisoner may stand mute two manner of ways, 1. When he stands mute, without speaking of any thing, and then it shall be inquired whether he stood mute of malice, or by the act of God; and if it be found that it was by the act of God, then the judge of the court *ex officio* ought

to inquire whether he be the person, and of all other pleas which he might have pleaded, if he had not stood mute. 2. When he pleads Not guilty, or doth not answer directly, or will not put himself upon the inquest, to be tried by God and the country. *Co. 2 par. Inst. cap. 12.*

STAT. *West. 1. 3 Edw. 1. c. 12.* [*A. D. 1275. intituled*] “The punishment of felons refusing lawful trial.”

“It is provided also, that notorious felons, and which openly be of evil name, and will not put themselves in inquests of felonies, that men shall charge them with before the justices at the king’s suit, shall have strong and hard imprisonment, as they which refuse to stand to the common law of the land. But this is not to be understood of such prisoners as be taken of light suspicion.”

*Dyer, 205.
Kel. 70.
8 H. 4, 2.
4 Ed. 4, 11.
14 Ed. 4, 7.
21 Ed. 3, 8.
Fitz. Coron.
233, 283, 359.
2 Inst. 177.*

[*Notorious felons.*] This statute extends not to treason, which is the highest offence, nor to petit larceny, which is of all felonies the lowest; but it extends to women as well as to men, and so it appears by divers ancient and late precedents, and to that end is the general word felons used. 2 *Inst. 177.* *Portman Ch.* Justice said, that in his time all the justices agreed, that he who stands mute in case of treason shall not be put to penance, and therefore it seems that he shall be drawn and hanged. *Br. Pain, pl. 19.* Serjeant *Hawkins* says, it is clearly settled at this day, that standing mute upon arraignment of high treason is equivalent to a conviction by verdict, or confession, and consequently subjects the criminal to the same kind of judgment and execution, as such a conviction would do. 2 *Hawk Pl. C. 329, cap. 3, sect. 9, S. P. Co. Lit. 391. a. S. P. D. 205, pl. 4. Mic. 3 & 4 El. S. P. Jenk. 223, pl. 81.* If a man appear to stand obstinately mute in petit larceny, he shall have the like judgment, &c. as if he had confessed the indictment. 2 *Hawk, Pl. C. 329. cap. 30, sect. 10. S. P. 2 Hawk. Pl. C. 331, cap. 30, sect. 17.*

[*Which openly be of evil name.*] The matter must be evident or probable, which it is the judge’s duty to look unto. 2 *Inst. 177.* *S. P.* cited by Serjeant *Hawkins*, and that Sir *William Staunford* says, that there ought to be evident or probable matter to convince the party of the crime whereof he is arraigned, or otherwise that he be a notorious felon, or openly of bad fame, and therefore he advises the judge, for the satisfaction of this statute, and discharge of his duty, to examine the evidence which proves the prisoner guilty of the fact, before he proceed to the judgment of *pain fort & dure*; yet the serjeant says he cannot find any book which takes notice of any examination of this kind, or of any entry, that the defendant appeared to be a notorious felon before such judgment given against him upon his standing mute, whether upon an indictment or appeal; but all the books cited [there] in the margin seem to intimate, that the standing mute is of itself a sufficient ground for such judgment; yet all that can be inferred from thence seems to be this, that it is not necessary to

make any thing of this kind part of the record, it being a matter left to the discretion and conscience of the judge, and to be presumed where it is not expressed. But as to all capital appeals whatsoever, and all indictments and appeals of petit treason, perhaps it may be said, that not being within this statute, but remaining as they were at common law, the obstinacy of a criminal in standing mute to them, may be of itself without more, a sufficient inducement to a judge to award him to his penance; but considering those appeals and indictments are within the same reason with those mentioned in the statute, and it is uncertain how the common law stood in relation to these matters, as appears by the best authors differing among themselves concerning them, and seeing the method prescribed by the statute is very just and equitable, it seems prudent at least in the judge to observe the same rules in all cases of this kind. 2 *Hawk. Pl. C.* 330, cap. 30, sect. 4.

And will not put themselves.] The act speaks only of indictments at the suit of the king; but the judgment of *pain fort & dure* was at the common law, both in appeals and indictments. 2 *Inst.* 177.

At the king's suit.] This act extends not to the suit of the party by appeal, because as said before the judgment of *pain fort & dure* was at the common law both in appeal and indictment. S. P. *Fenk.* 223, pl. 81.

Shall have strong and hard imprisonment.] Some hold from these words, that the punishment of *pain fort & dure* was given by this act; others held, that at the common law for felony the prisoner standing mute should upon a *nihil dicit* be hanged, as at this day it is in case of high treason, and, as they say, in case of appeal; others held, that at common law, in favour of life, he should neither have *pain fort & dure*, nor have judgment to be hanged, but to be remanded to prison until he would answer. 2 *Inst.* 178. But in answer thereto Lord *Coke*, after describing the severity of the punishment, observes, that the party upon the matter dies three manner of ways, *viz. onere, fame and frigore*; by weight, famine and cold; and that the reason of this terrible judgment is given by the statute, *viz.* Because he refuses to stand to the common law of the land, *i. e.* lawful and due trial according to law, and therefore his punishment is more severe, lasting, and grievous without comparison, than it should have been for the offence of felony itself; and the felony itself cannot be adjudged without answer; and denies all those other opinions. And as to the first he holds, that this punishment was not first inflicted by this act; for that no court or judges could upon these words (have strong and hard imprisonment) frame such a judgment consisting of so many divers particulars; and hence it necessarily follows, that this punishment, because it was to be done in prison, was before this act, but sufficiently signified (as ever since it hath been) by those two epithets *fort & dure*; so as this act setteth forth the quality of this judgment, and not the judgment itself. 2dly, This act describes what persons shall be punished by *pain fort & dure*, *viz.* notorious felons, and which are openly of ill fame, but sets not down (as has been said) what the punishment is, but provides, that it shall not be for light suspicion. 3dly, All books that held with great authority, that in
case

case of appeal the prisoner standing mute shall have judgment of *pain fort & dure*, do prove that such judgment was before the making this act; for this statute extends not to appeals, which are the suit of the subject, but only to the suit of the king, which is by way of indictment; and herein the words of *Fleta* are very remarkable, *Si autem appellatus nihil respondere velit, &c. & appellans inde petierit Judicium, indefensus remanebit, morti tamen non condemnabitur, sed gaole committetur, &c.* and there sets down the penance, which of necessity must be at the common law; and herewith agreeth *Britton*, who wrote soon after this act; so that the penance in case of appeal is both by ancient and sound authority. And as to the second opinion, the answer to the first answers this also, and if he should be hanged by the common law, this statute does not take it away, but ordains, that he should have strong and hard imprisonment, and therefore that a felon standing mute, may, according to their opinions, be hanged at this day, is contrary to all the books and constant and continual experience. As to the third, it would be entertaining too mean an opinion of the common law, should it so far encourage felons, that they by their contumacy against it suffer one of the lowest punishments, *viz.* imprisonment till they should answer; and the answer to the first opinion is likewise so to this. 2 *Inst.* 178, 179.

[Of light suspicion.] Serjeant *Hawkins* says, that he does not find it said in any book, what shall be done to a person who obstinately standing mute to an arraignment shall appear to be charged upon very light suspicion: but says he takes it for granted, that he may be severely fined and imprisoned for the contempt. 2 *Hawk. Pl. C.* 330, *cap.* 30, *sect.* 15.

Appeal at *Newgate* before the justices of gaol delivery, the defendant pleaded Not guilty, and would not put himself upon the country, by which he was put to penance, and the judgment was, that he shall be remanded to the prison where he was before, and after he shall be put into a chamber, and there shall be naked without litter, rushes, or cloaths, or other thing but the bare ground, and then he shall be laid upon his back naked, without any thing about him, saving a cloth to cover his members, and that his head and his feet be covered, and that the one arm be drawn to the one quarter of the chamber with a cord, and the other arm to another quarter, &c. and that the one foot shall be drawn to the one quarter of the chamber, and the other foot to the other quarter; &c. and that a piece of iron shall be put upon his body as much as he can suffer and bear upon him and more, and the first day he shall have three morsels of bread made of barley, without any drink, and the second day he shall drink as much as he can at three times of water which is next to the door of the prison, except running water, without any bread, and this shall be his diet till he be dead. *Quod nota.* *Br. Corone, pl.* 160, *cites* 14 *Ed.* 4, 8.

Serjeant *Hawkins* says, that the manner of inflicting this punishment may be best found from the books of entries and other law books, all of which generally agree, that the prisoner shall be remanded to the place from whence he came, and put into some low dark room, and there laid

on his back without any manner of covering, except for the privy parts, and that as many weights be laid upon him as he can bear and more, and that he shall have no manner of sustenance but the worst bread and water, and that he shall not eat the same day in which he drinks, nor drink the same day on which he eats, and that he shall so continue till he die. But that it is said that anciently the judgment was not, that he should continue until he should die, but until he should answer, and that he might save himself from the penance, by putting himself upon his trial, which he cannot do at this day after the judgment of penance once given. 2 *Hawk. Pl. C.* 330, *cap.* 30, *f.* 16. And there in the margin the serjeant, as to the *remanding him to the place whence he came*, cites *H. P. C.* 227, *S. P. C.* 150 (E). *Keilw.* 70, *a.* 4 *Ed.* 4, 11, *pl.* 18. 14 *Ed.* 4, 8, *pl.* 17. *Abr. Br. Corone* 160. 2 *Inst.* 178. *Ra. Ent.* 385, *pl.* 17. 8 *Ed.* 4, 1, *pl.* 2. And as to the words *in some low dark room*, he says, that this clause is omitted in *Keilw.* 70, *a.* 4 *Ed.* 4, 11, *pl.* 18, but is mentioned in all the other books above cited, but with this difference, that 14 *Ed.* 4, 11, *pl.* 17, says only he shall be put in a chamber, without adding that it shall be low or dark. And as to the words *there laid on his back*, &c. he says, that in this all the books above cited seem to agree. And 14 *Ed.* 4, 8, *pl.* 17, and *S. P. C.* 150 (E), and 2 *Inst.* 178, add, that he shall lie without any litter or other thing under him, and that one arm shall be drawn to one quarter of the room with a cord, and the other to another, and that his feet shall be used in the same manner. But that these clauses are wholly omitted in all the other books above cited, except *H. P. C.* which takes notice of the latter of them only. And *Ra. Ent.* 385, *pl.* 2, adds, that an hole shall be made for the head. And *Keilw.* 70, *a.* says, that the head shall not touch the earth; but none of the other mention either of these clauses. And as to the words, *that as many weights shall be laid upon him as he can bear and more*, &c. he says, that in this all the books above cited agree. And as to the word *bread*, he says, that 14 *Ed.* 4, 8, *pl.* 17; *S. P. C.* 150, (E), and 2 *Inst.* 178, are, that he shall have three morsels of barley bread a day. *Keilw.* 70, *a.* that he shall have only rye bread, and *Ra. Ent.* 385, *pl.* 2, and 2 *Hen.* 4, 1, *pl.* 2, generally, that he shall have of the worst bread. And as to the word *water*, he says, that in 14 *Ed.* 4, 8, *pl.* 17; *S. P. C.* 150, (E), 2 *Inst.* 178, and 8 *Hen.* 4, 1, *pl.* 2; and *Keilw.* 70, *a.* are, that he shall have the water next the prison, so that it be not current; but *Ra. Ent.* 385, *pl.* 5, is general, that he shall have the worst water. And as to the words, *not eat the same day in which he drinks, nor drink the same day on which he eats*, &c. he says, this is omitted in *Keilw.* 70, *a.* and in 8 *Hen.* 4, 1, *pl.* 2. And as to the words, *till he die*, he says, this is omitted in none of the books above cited, except 14 *Ed.* 5 [4] 11, and *H. P. C.* 227. But that neither of these books give the whole judgment at large. *Hawk. Pl. C.* 330, 331, *cap.* 3.

Lord Chief Justice Hale, in his history of the pleas of the crown, says, that the punishment of pressing to death did not arise from this statute, but was anciently a punishment by the common law. The words of the statute are, that notorious felons, &c. As this law therefore is so highly penal,

penal, I cannot think, says the author of *Observations on the Statutes*, &c. that judges, who have tied the thumbs together of criminals, in order to oblige them to plead, can be justified under these words of the statute, though their intentions have been * merciful; especially as * It appears by the sessions paper, that this was practised at the Old Bailey in the reign of queen Ann, and perhaps there are later instances. whatever might have been the common law, this statute hath superseded it. *Prisone forte & dure* [strong and hard imprisonment] can mean nothing further than, if the criminal will not submit to a trial, he shall be remanded to a most close and severe confinement; how is it possible then to include pressing to death, with all its apparatus of torture, under these words? especially as the felon, when convicted, had his benefit of clergy. There is a record in *Rymer*, part xi. p. 137, which proves beyond dispute, that what is contended for is the true meaning of these words of the statute, and that it was nothing more than a confinement without any nourishment, which was justified under the word *prisone dure*. “Rex omnibus, &c. cum *Cecilia*, quæ fuit uxor *Johannis de Ryge-way*, nuper indictata de morte viri sui, &c. pro eo quod se tenuit mutam et ad pœnam suam exstitit adjudicata ut dicitur, in quâ sine cibo et potu in arctâ prisonâ per quadraginta dies vitam sustinuit viâ miraculi, et contra naturæ ordinem; nos eâ de causâ pietate moti perdonavimus,” &c. This pardon was granted by *Edward* the first, in the thirty-first year of his reign, and is therefore a *contemporanea expositio* of his own law. Notwithstanding Lord Chief Justice *Hale* asserts, that this punishment was by the common law, *Bracton* makes no mention of it, who some have supposed to have written before this statute. *Britton*, on the other hand, who is generally agreed to have written after this statute, mentions the punishment, “si les felons ne se voient acquitter, si soient mis a leur penance jusqu’à tant qu’ils ne plement.” The statute says, that only notorious felons are to be thus confined; and therefore in an appeal, where the supposed guilt was not so strongly proved as when there is an indictment found by a grand jury, the prisoner was not subjected to the punishment. The first question with regard to the *peine forte & dure* (a word substituted instead of *prisone forte & dure*) is in the year book of 14 *Edw.* 4, p. 7.—a criminal, on an appeal for murder, pleaded not guilty; and upon being asked, according to the common form, how he would be tried, would make no further answer: upon this, the court doubted whether he should be hanged, or ordered to suffer the *peine forte & dure*. Though all the judges were met in the exchequer-chamber upon this doubt, it does not appear that it was finally decided, notwithstanding the clause in this statute was under their consideration, as the report of the case concludes by citing it. The next case in the year-book, which relates to the *peine forte & dure*, is in the 8 *Hen.* 4, T. *Nich.* where the form of the judgment is first given. The marshal of the King’s Bench is ordered to put the criminals into “diverses measons basses et estoppes, que ils gisent per la terre tous nuds forsique leurs braces, que il mettroit sur chascun d’eux tant de fer et poids quils puissent porter, et plus issint quils ne se puissent lever, et quils naver aucun manger, ne boire, si non le plus pier pain quil puissent trouver, et de leau plus pres al gaole (excepte eau courante) et que le jour quils ont pain quil nayment de leau,

et

et e contra, et quils gisent issint tantquils furent morts." Notwithstanding this conclusion of *tant qu'ils furent morts*, we find in the year book of 8 Hen. 4, T. Mich. fol. 1, that one of the judges, in a question relative to this punishment, says, that, notwithstanding the *penance*, the criminal may live many years. The form of this judgment seems to have been never strictly adhered to, as the judgment cited above differs, in some particulars, from the form in *Rassell's Entries*, and, consisting of such very minute directions, could not probably have been at once settled: V. *Stanford's Pleas of the Crown*, p. 150. & seq. There is likewise, in *Babington's* advice to grand jurors, another form of this sentence, which differs in this, that the criminal is to drink but three times in a day, which must be a great addition to the torment, as the agony probably must bring on a violent thirst and fever, as happens to those who are broken on the wheel. *Hollinshead* likewise mentions another circumstance in the punishment as used in his time, viz. that the back of the criminal was placed upon a sharp stone, vol. i. p. 135. Other precedents likewise mention the tying of the arms and legs of the criminal with cords fastened at different parts of the prison, and extending the limbs by these cords as far as they could be stretched. From this it appears, that there is no settled form of this terrible judgment, which is contrary to a fundamental principle of the criminal law of *England* in capital offences; and no one form (at least that I have been able to meet with) takes notice of the preparatory torture of tying the thumbs with whipcords, which, though mercifully intended to prevent the more severe punishments, by obliging the criminal to plead, cannot (it should seem) be justified. As it is very unusual for criminals to stand mute on their trials in more modern days, and it was not unfrequent if we go some centuries back in the *English* history, it may not be improper to observe, that the occasion of it was to prevent forfeitures, and involving perhaps innocent children in the consequences of the parent's guilt. These forfeitures only accrued upon judgment of *life and limb*, and, to the disgrace of the crown, were too frequently insisted upon, and levied with the utmost rigor. It however still continues to be part of the law of this country; and I have already mentioned an instance in the reign of queen Anne, of putting this sentence in execution, and perhaps more instances may have happened even since that time. I should conceive upon the whole, that the words in the present statute, which have occasioned these observations, viz. *prisonne forte & dure* have been misconstrued, by substituting in the room of *prisonne* the word *peine*. The record cited from *Rymer* proves beyond a possibility of doubt, that, soon after this statute, the punishment was merely imprisonment, and an injunction to the officers, in whose custody the criminal was, not to provide him with any nourishment. I should imagine, that the alteration in this punishment, by the different tortures afterwards used, arose from justices in eyre and justices of gaol delivery not staying above two or three days in a county town, and who therefore could not wait for the tedious method of forcing the criminal to plead; and the record from *Rymer* shews, that, in the in-

stance.

stance already observed upon, the criminal had been forty days in this close confinement. It seems likewise clear, that, whatever this punishment might have been by the common law, this statute hath superseded it; and it is a presumption (against even so great authorities as Lord Chief Justice Coke and Lord Chief Justice Hale) that there was no such punishment by the common law, as it is admitted that a traitor cannot receive this punishment, because the words of the statute confine it to the case of felons. And the argument is very strong, that if felons were subjected to this sentence, traitors would still less have escaped it. After all, the having recourse to this punishment, when the criminal stands mute and will not plead, seems to be very unnecessary. The common reason given, that the criminal must acknowledge the jurisdiction of the court, seems not to have much weight. If the court knows they have the power to try him, what signifies this forced acknowledgment of their jurisdiction? It would be much more reasonable to adopt the practice of the Scots law, "if the criminal stands mute and will not plead, the trial proceeds as usual, and it is left to the criminal to manage his own defence as he shall think proper." Innes's Sum. View of the Scots Law. *Observations on the Statutes, &c.* page 51, 52.

Northern Borders.

STAT. 43 Eliz. c. 13. See this act under *Burning*, page 476.

STAT. 4 Jac. I, c. 1. [*A. D. intituled*] "An act for the utter abolition of all memory of hostility, and the dependance thereof between England and Scotland, and for the repressing of occasions of disorders, and disorders in time to come."

SECT. 24. "And forasmuch as no abolition of hostile laws, or of the memory of hostility, or of suits and controversies thereupon depending, can presently and at once extirpate and reform those inveterate evil customs and disorders, as well of feuds and blood, as of theft and spoils, wherewith the worst sort of inhabitants, near the limits of both realms, were infected and injured, although by his majesty's incessant care and princely policy, those parts be already reduced to a more civil and peaceable estate than could in so short time have been expected; (2) and whereas experience teacheth, that the malefactors of either realm, having committed their offences in the other realm, do forthwith fly and escape many times into their own country, thereby to purchase their impunity, to the great and manifest grievances of the one realm, and the dishonour of the other:

Evil customs
settled, be not
presently to
be extirpated.

SECT.

The difference of the laws, trials and proceedings in cases of life between the justices of England and Scotland.

Trials of felonies committed by Englishmen in Scotland.

Witnesses allowed to the party arraigned.

The prosecutor and witnesses shall be bound to give evidence.

The accessory shall be tried, though the principal be not convicted or attainted.

Seet. 25. "And whereas in regard of some difference and inequality in the laws, trials and proceedings in cases of life, between the justices of the realm of *England*, and that of the realm of *Scotland*, it appeareth to be most convenient for the contentment and satisfaction of all his majesty's subjects, to proceed with all possible severity against such offenders in their own country, according to the laws of the same whereunto they are born and inheritable, and by and before the natural-born subjects of the same realm, if they shall be there apprehended :

Seet. 26. "Be it therefore enacted by the authority aforesaid, That all offences of conjuration, witchcraft, and dealing with evil and wicked spirits, murder, manslaughter, felonious burning of houses and corn, burglary, robbing of houses by day, robbery, theft, the detestable vice of buggery committed with mankind or beast, and rape heretofore done and committed since his majesty's coming to the crown of *England*, or hereafter to be done or committed by any of his majesty's natural-born subjects of this realm of *England*, or the dominions of the same, within the realm of *Scotland*, or the dominions thereof, and the accessories of and to the same, shall be from henceforth enquired of, heard and determined before his majesty's justices of assize, or his commissioners of *Oyer and Terminer*, or gaol-delivery, being natural born subjects within this realm of *England*, and none other, by good and lawful men of the counties of *Cumberland*, *Northumberland*, *Westmorland*, or any of the said counties, at the election of the said justices of assizes, or commissioners, in like manner and form to all intents and purposes (the alterations hereafter in this act expressed, only excepted) as if such offences had been done and committed within the same shire where they shall be so enquired of, heard and determined, as is aforesaid ; (2) all which trials for the better discovery of the truth, and for the better information of the consciences of the jury and justices, there shall be allowed unto the party so arraigned, the benefit of such witnesses only to be examined upon oath, that can be produced for his better clearing and justification, as hereafter in this act are permitted and allowed.

Seet. 27. "And be it further enacted by the authority aforesaid, That every justice of peace of the counties aforesaid, unto whom complaint shall be made, shall have full power and authority by virtue of this act, to bind over by recognizance in a convenient sum taken to his majesty's use, as well the party prosecuting, as any witnesses which he shall desire to produce (so as the said witnesses may have their reasonable charges first tendred unto them) to prosecute and give in evidence before such his majesty's justices, as aforesaid, as the case shall require.

Seet. 28. "And be it further enacted by the authority aforesaid, That every commander, procurer, counsellor, abettor, comforter, receiver, or other accessory of or to any of the offenders or offences aforesaid, so committed in *Scotland*, as aforesaid, offending within the realms of *England* or *Scotland*, shall be proceeded withal, indicted, tried, judged and executed without delay, notwithstanding the principals or any of them be not convicted or attainted ; (2) and that no such offender, either accessory

sary or principal, shall be allowed the benefit of his clergy, nor admitted to his peremptory challenge of above the number of five: (3) and that every indictment of any of the offences aforesaid, so committed, as aforesaid, shall be judged of as good force in law, notwithstanding the words (*contra pacem, coronam & dignitatem nostras*) be omitted, as if the said words had been therein contained. The words *contra pacem, &c.* omitted in an indictment.

Sec. 29. "And be it further enacted, That no sheriff, under-sheriff, or other minister to whom it appertaineth, shall return any juror to enquire of, or try any of the offences aforesaid, so committed, as aforesaid, except every such juror shall have freehold in possession to the value of five pounds by the year, in the county where such enquiry and trial shall be; (2) upon pain to forfeit for every juror that shall be returned contrary to this act, the sum of forty pounds; the one moiety to the king's majesty, his heirs and successors; the other to the party that will sue for the same, by action of debt, bill, plaint or information, in any of his majesty's courts at *Westminster*, wherein no essoin, protection, or wager of law shall be allowed; and that the offender shall and may challenge any juror that shall pass upon his life, for want of such freehold, as aforesaid. Of how much freehold every juror returned to try an offender shall be.

Sec. 30. "Provided always, and be it enacted by the authority aforesaid, That no natural subject of his majesty of the realm of *England*, or of the dominions of the same, shall for any of the offences aforesaid committed within the realm of *Scotland*, or for being accessory to the same, forfeit any lands, tenements or hereditaments, either free, copy or customary hold, neither shall the blood of such offender be corrupted, nor the wife lose her dower, yet nevertheless the said offenders shall forfeit to his majesty, his heirs and successors, their goods, chattels and credits whatsoever. Challenge for want of freehold.

Sec. 31. "And forasmuch as it is intended, That an act like unto this shall be ordained in the realm of *Scotland*, for the trial and punishment of offenders, being his majesty's natural-born subjects of the same realm, which shall commit any of the offences aforesaid, within the realm of *England*, or the dominions thereof, and shall after escape or return back into *Scotland*: A like act shall be made in Scotland.

Sec. 32. "Be it therefore enacted by the authority aforesaid, That upon complaint made by any of his majesty's subjects of the realm of *England*, to any of the justices of assize, commissioners of *Oyer and Terminer*, or gaol-delivery, or justice of the peace, within the precincts of their several commissions respectively, being natural-born subjects within the realm of *England*, concerning any such offence committed by any of his subjects of the realm of *Scotland*, within the realm of *England*, in case where the offender is returned into the realm of *Scotland*, as aforesaid, the said justice or commissioner shall have full power and authority to bind over as well the said party complaining or prosecuting, as any witnesses that he shall desire to produce, (so as their reasonable charges be first tendered unto them) by recognizance in a convenient sum to his majesty's use, to prosecute and give in evidence within the realm of *Scotland*; (2) wherein, if default shall be made, and the same proved by certificate, or Binding of the complainant and witnesses to give evidence against any offender in Scotland.

otherwise, before the lord treasurer, chancellor and barons of the exchequer, or any of them in the exchequer-chamber, and a decree there made that the same recognizance shall stand forfeited, then the court of exchequer shall thereupon proceed for the levying of the debt of the said recognizance, as if it were adjudged forfeited by the course of the common law.

Scottishmen coming into England to give evidence against offenders, shall be free from arrests.

Sett. 33. "And be it further enacted by the authority aforesaid, That on the other part, every of his majesty's subjects of the realm of *Scotland*, either party grieved, or witness, which shall prosecute in any the cases aforesaid within the realm of *England*, and thereby shall have occasion to make his repair hither, either voluntarily, or by the like bond as is before expressed, on the part of the realm of *England*, shall have and enjoy privilege and immunity from all manner of arrests, concerning all offences, or other causes, as well capital as others, committed, done or occasioned, before he shall so come into *England*, as aforesaid, (except treason or wilful murder) so long as he or they shall be necessarily going, coming, or abiding within the said realm of *England*, for the prosecution of the said offenders.

The offence shall be alledged in the indictment, where it is done.

Sett. 34. "Provided nevertheless, That every such offence so committed, as aforesaid, shall be laid and alledged in the indictment or other declaration, to be done and committed in the realm of *Scotland*, according to the truth of the fact, and not in the counties where the trial is limited, to be had and made, as aforesaid; any thing in this act formerly contained to the contrary notwithstanding.

He that is once tried, shall not be estfoons called in question for the same offence.

Sett. 35. "Provided also, and be it further enacted, That if any his majesty's subjects of the realm of *Scotland*, shall be proceeded with and tried in the realm of *Scotland*, upon the prosecution of any party grieved, and upon evidence in open court for any offence done or committed within the realm of *England*, that no such person shall be estfoons called in question, or proceeded with for the same fact within the realm of *England*, but that it shall be lawful for every such person to plead or alledge for himself upon his arraignment, that he was formerly lawfully acquitted, convicted, or attainted of the same offence within the realm of *Scotland*, and that thereupon all further proceeding shall stay, until the court have sufficiently informed themselves by certificate from the realm of *Scotland*, or by any other good ways and means, of the truth of the said allegations; which if they shall find true, the said person shall be forthwith discharged of all further impeachment or proceeding.

No Englishman shall be sent out of England to receive his trial in Scotland. Altered by 7 Jac. 1, c. 1. and enforced by 13 & 14 Car. 2, c. 22.

Sett. 36. "And be it further enacted by the authority aforesaid, That no natural-born subject of the realm of *England*, or the dominions of the same, shall for any high treason, misprision, or concealment of high treason, petty treason, or any other whatsoever offence or cause committed within *Scotland*, be sent out of *England*, where he is apprehended, to receive his trial, until such time as both realms shall be made one in laws and government, which is the thing so much desired, as that wherein the full perfection of the blessed union already begun in his majesty's royal person consisteth: (2) And because there is too great reason to fear, that

the partiality and corruptions of many that live in those parts, through their long and evil course of life, cannot but produce much and frequent perjury at such trials as aforesaid, if the jury in their proceedings do not use great wisdom and circumspection, in which respect it is most just and necessary to provide as well, that the guilty shall not escape, as that the innocent shall not be condemned:

SECT. 37. "Be it therefore provided, and be it enacted by the authority aforesaid, That at all such trials, the jurors then and there sworn, or the greater part of them (who in respect of the great trust and charge which must now be laid upon them, are by virtue of this act, as before appeared, to be persons of better condition and quality than the law required heretofore for jurors in trials of like offences) shall have in their power and election, according to their conscience and discretion upon their oaths, to receive and admit only such sufficient, good and lawful witnesses upon their oaths, either for or against the party arraigned, as shall not appear to them, or the greater part of them to be unfit and unworthy to be witnesses in that case, either in regard of their hatred and malice, or their favour and affection, either to the party prosecuting, or to the party arraigned, or of their former evil life and conversation.

The jurors may allow or reject the witnesses.

SECT. 38. "Provided also, and be it further enacted, That if the offender in any the cases aforesaid shall be a peer of the realm, then his trial therein shall be by his peers, as is used in cases of felony or treason, and not otherwise.

Trial of a peer by his peers.

STAT. 7 Jac. 1, c. 1. [A. D. 1609, intituled] "An act for the better execution of justice, and suppressing of criminal offenders in the north-parts of the kingdom of *England*."

"Whereas in a statute made in the third session of this present parliament, intituled, *An act for the utter abolition of all memory of hostility, and the dependancies thereof, between England and Scotland, and for the refreshing of occasion of discords and disorders in time to come*, it was amongst other things enacted, That no natural born subject of the realm of *England*, or the dominions of the same, should for any high treason, misprision or concealment of high treason, petty treason, or any other whatsoever offence or cause committed within *Scotland*, be sent out of *England* where he is apprehended, to receive his trial, until such time as both realms should be made one in laws and government, which is the thing so much desired, as that wherein the full perfection of the blessed union already begun in his majesty's royal person consisteth.

Where an Englishman shall have his trial, that committeth felony in Scotland, 4 Jac. 1, c. 1.

SECT. 2. "Since the making of which statute, although those parts of the kingdom of *England*, adjoining and lying near unto the realm and kingdom of *Scotland*, have been, and are by his majesty's incessant care and princely policy, reduced to a more civil and peaceable estate than could in short time have been expected or hoped for: (2) yet experience teacheth, that malefactors of either realm having committed their offences in the other realm, do forthwith fly and escape into their own country,

C c 2

thereby

thereby to purchase their impunity, to the great and manifest grievance of the one realm, and the dishonour of the other: by means whereof very many great and heinous offences since the making of the said statute, have been, and are still likely to be committed without condign punishment; (3) for that since the making of the said statute, there hath not been any one offender committing any the offences aforesaid in *Scotland*, that hath been prosecuted to his trial, judgment or execution in *England*, by reason or upon any the branches, laws or ordinances in the said statute mentioned or contained: (4) whereby it manifestly appeareth, that the said clause in the said statute contained, and before in this present act expressly mentioned, concerning the not sending out of *England* any natural-born subject of this realm, or the dominions of the same, for any whatsoever offence committed within the realm of *Scotland*, to receive his trial for any the said offences, hath not brought forth that good effect as was hoped for, and by the said law intended, to the great prejudice and dishonour of both realms:

If an Englishman shall commit felony in Scotland, and then fly into England, the justices may send the offender into Scotland to be tried.

Señ. 3. “ For the preventing of which apparent and too manifest mischief and inconvenience, be it enacted, and by the authority of this present parliament established, That if at any time or times after the end of this present session of parliament, any person or persons shall commit any offence or offences within the realm of *Scotland*, which by the laws of this realm of *England*, is, are, or shall be declared or adjudged to be petty treason, murder, manslaughter, felonious burning of houses and corn, burglary, robbing of houses by day, robbery, theft or rape, and do or shall fly or escape into the realm of *England*, and be or shall be apprehended within any the counties of *Northumberland*, *Cumberland*, *Westmorland*, or any parts or members of the same, or within the parts or places lying on the north-side of the river of *Tine*, commonly called or known by the names of *Bedlingtonshire*, *Northamshamshire* and *Islandshire*, the town and county of *Newcastle upon Tine*, and the town of *Berwick upon Tweed*, with the bounds and liberties thereof; That then it shall and may be lawful to and for the justices of assize, or any one of them in the absence of the other, the justices of gaol-delivery at their gaol-delivery, or any four of them, or the justices of peace in their general or quarter-sessions, or any four of them, upon due and mature examination of the said offence or offences in open sessions, and pregnant proofs of the same, by warrant under their hands and seals, to remand and send all and every such offender and offenders into the realm of *Scotland*, there to receive their trial for any the offences aforesaid by them there committed; any thing in the said statute to the contrary thereof notwithstanding.

Continuance of this statute.

Señ. 4. “ This law to continue to the end of the first session of the next parliament.

A like act is to be made in Scotland.

Provided nevertheless, and be it enacted by the authority aforesaid, That this statute, nor any clause therein contained, shall take effect or be in force, or in any wise be deemed or expounded to take effect, to any intent, construction or purpose, until a law by act of parliament be made and established within the realm of *Scotland*, for the remanding and sending,

ing out of the realm of *Scotland* into the realm of *England*, all and every person and persons born within the realm of *Scotland*, or the dominions of the same, which shall at any time hereafter commit any the offences aforesaid within the realm of *England*, to receive his or their trial in the realm of *England*, for all and every the said offences by them committed in the said realm of *England*. 3 Car. 1, c. 4. Continued until the end of the first session of the next parliament, and farther continued by 16 Car. 1, c. 4."

STAT. 13 & 14 Car. 2, c. 22. [A. D. 1662, intituled] "An act for preventing of theft and rapine upon the northern borders of *England*."

"Whereas a great number of lewd, disorderly and lawless persons, being thieves and robbers, who are commonly called *moss troopers*, have successively for many and sundry years last past, been bred, resided in, and frequented the borders of the two respective counties of *Northumberland* and *Cumberland*, and the next adjacent parts of *Scotland*, and they taking the opportunity of the large waste grounds, heaths and moorlands, and the many intricate and dangerous ways and by-paths in those parts, do usually, after the most notorious crimes committed by them, escape over from the one kingdom into the other respectively, and so avoid the hand of justice, in regard the offences done and perpetrated in the one kingdom, cannot be punished in the other.

SECT. 2. "And whereas since the time of the late unhappy distractions, such offences and offenders, as aforesaid, have exceedingly more increased and abounded, and the several inhabitants of the said respective counties have been for divers years last past necessitated at their own free and voluntary charge, to maintain several parties of horse for the necessary defence of their persons, families and goods, and to the end the aforesaid evil and pernicious members might be apprehended and brought to judgment; (2) and whereas the most part of the inhabitants of the said counties being more remote from the borders than other parts, and consequently not so much exposed to imminent dangers as others, are therefore unwilling to contribute their proportionable parts of the aforesaid charge, and yet notwithstanding it cannot probably or possibly be avoided, but that those inhabitants of the respective counties who hold themselves most secure, must certainly sustain much damage and detriment in their goods and estates, in case the aforesaid *moss-troopers* be not timely suppressed, but suffered to grow numerous, strong and potent, which they must needs do in case there be no restraint upon them; (3) be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by authority thereof, That from and after the feast of St. *Michael* the archangel, which shall be in the year of our Lord one thousand six hundred sixty and two, for, and during the term of five years next ensuing the date of this present act, it shall and may be lawful for the respective justices of peace of the said respective counties, or the major part of them, at any general sessions of the peace to be holden for the

the said counties respectively on the behalf of the said counties, or either of them, from time to time as they shall see occasion, to make an order in open court of sessions for charging, according to their several proportions, all, and every the several inhabitants of the said respective counties, for the safeguard and securing of the said several counties and inhabitants thereof, from all injury, violence, spoil and rapine of the *moss-troopers* aforesaid.

Sett. 3. " Provided, That the said county of *Northumberland* be not by force of this act at any time charged above the sum of five hundred pounds in the year; nor the said county of *Cumberland* charged above the sum of two hundred pounds in the year: (2) And for this end and purpose, the said several justices of peace of the respective counties aforesaid, are hereby impowered and authorized at their general quarter-sessions aforesaid, to appoint and employ from time to time, if occasion require, any person or persons to have the conduct and command of a certain number of men, not exceeding the number of thirty men in the county of *Northumberland*, and twelve in the county of *Cumberland*, whereby the malefactors aforesaid may be searched out, discovered, pursued, apprehended, and brought to trial of the law: (3) and all and every the said justices of peace of the respective counties aforesaid, or the major part of them, at any general sessions of the peace to be holden for the said counties, or either of them respectively, are hereby further impowered and authorized by force of this present act, to make, and issue forth their respective warrants under their hands, for the levying and collecting any sum or sums of money ordered to be paid for and towards the safeguard and securing of the said counties respectively, as aforesaid, and to give full power to the several constables and other officers, to raise, levy and collect the said money, and all and every the inhabitants of the said several counties, according to their respective proportionable estates in lands or goods, by distress and sale of goods, rendering the overplus, if there be any, to the respective owner or owners: (4) and the said justices of peace in the said several counties, or any one of them respectively, are hereby also authorized to examine any complaint made against the collectors and constables, or any other officers or ministers of justice whatsoever, or any of them, or any other refractory person or persons whatsoever, that at any time hereafter shall refuse, neglect or fail to give obedience to this act, or shall do any act or acts in disturbance or obstruction thereof, and to bind over such person or persons to the next quarter-sessions, according to the known laws of the land, to the end such person or persons may be proceeded withal according to justice.

Sett. 14. " And the said respective justices of peace, as aforesaid, are hereby further impowered and authorized on behalf of the said several counties respectively, to appoint a treasurer to receive from the said collectors the monies by them collected, and to pay over the same according to the orders they shall receive from the said justices at the general sessions of the peace to be holden for the said respective counties: (2) and the said justices are also impowered to agree and article with such person or persons

persons yearly, as they shall think fit to employ in the said service, and to take sufficient security of them for the faithful and most effectual performance thereof, for the best safeguard, advantage, and benefit of the people, according to the true intent and meaning of this act.

Sett. 5. "And in case any person or persons shall in pursuance of this act be employed in the border-service, and shall at any time hereafter wilfully and corruptly, or for any sinister respect whatsoever, neglect or forbear to discover or apprehend, or to bring to trial any of the said persons called *moss-troopers*, as aforesaid, and shall be convicted thereof, according to law, he or they shall from thenceforth be disabled, and made incapable for ever after to manage or take upon him or them the said employment, and to suffer such fine and imprisonment, according to the quality of his or their offence, as the justices of peace at their general sessions shall think fit to inflict.

Sett. 6. "Provided nevertheless, and be it hereby declared, That it shall be lawful for the justices of peace of either of the said counties as aforesaid respectively, at any time hereafter, to moderate or lessen the said charge, if they see cause.

Sett. 7. "Provided, That this act shall continue and be in force for five years and no longer.

Sett. 8. "Provided always, and be it further enacted by the authority aforesaid, That for better suppression and punishment of the said *moss-troopers* flying out of *England* into *Scotland*, or out of *Scotland* into *England*, the statutes made in the several sessions of parliament, in the fourth and seventh years of king *James*, shall be revived and put in execution according to their true intent. 18 *Car.* 2, *cap.* 3. Continued for seven years from the expiration of this act. Farther continued for eleven years by 10 *Geo.* 1, *c.* 17, *f.* 1. Continued till 1st *September*, 1744, by 6 *Geo.* 2, *c.* 37, *f.* 7; and by 11 *Geo.* 2, *c.* 40, to 24th *June*, 1751, &c. Further continued by 24 *Geo.* 2, *c.* 57; and made perpetual by 31 *Geo.* 2, *c.* 42.

STAT. 18 *Car.* 2, *c.* 3. [*A. D.* 1666, intituled] "An act to continue a former act for preventing of theft and rapine upon the northern borders of *England*."

Sett. 1. "Whereas an act was made in the fourteenth year of the reign of our sovereign lord the king that now is, intituled, *An act for preventing of theft and rapine upon the northern borders of England*; which act is very near expiring, and hath been found very necessary for the preservation of those places from that great number of lewd, disorderly, and lawless persons that usually frequented thereabouts: (2) be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords, spiritual and temporal, and commons in this present parliament assembled, That the said act, and every clause and clauses therein contained, and all and every the powers and authorities thereby given, be, continue,

tinue, and remain in force until the end of seven years from the expiration or determination of the forementioned act.

Clergy taken away from notorious thieves in Northumberland and Cumberland.

Seet. 2. "And be it further enacted by the authority aforesaid, That the benefit of clergy shall be taken away from great, known, and notorious thieves and spoil-takers in the said counties of *Northumberland, Cumberland*, or either of them, during the continuance of this present act, who shall be duly convicted for theft done or committed within the said counties, or either of them: (2) or otherwise, that it shall and may be lawful to and for the justices of assize, and commissioners of oyer and terminer, or gaol-delivery, before whom such offender shall be convicted within the said counties, or either of them, to transport, or cause to be transported the said offenders, and every of them, into any of his majesty's dominions in *America*, there to remain, and not to return; any former law, statute or usage to the contrary in any wise notwithstanding.

STAT. 29 & 30 *Car. 2, c. 3.* [*A. D. 1676, intituled*] "An act for continuance of two former acts for preventing of theft and rapine upon the northern borders of *England*."

Seet. 1. "Whereas an act was made in the fourteenth year of the reign of our sovereign lord the king that now is, intituled, *An act for preventing of theft and rapine upon the northern borders of England*: and whereas also another act was made in the eighteenth year of the reign of our sovereign lord the king, intituled, *An act to continue a former act for preventing of theft and rapine upon the northern borders of England*: both which acts are expired, and have been found very necessary for the preservation of those places from that great number of lewd, disorderly, and lawless persons, that usually frequented thereabouts: (2) be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by authority thereof, That the said two former acts, and either of them, and every matter, clause and clauses therein contained, and all and every the powers and authorities thereby given, shall be, continue and remain in full force from henceforth, for and during the space and time of seven years; and also from thence until the end of the first session of the next parliament.

The acts of 13 & 14 *Car. 2, c. 22.* and 18 *Car. 2, c. 2.* continued.

Seet. 2. "And for the better management of the powers and authorities in or by the said two former acts given; (2) be it further enacted by the authority aforesaid, That the said several justices of the peace of the said respective counties, shall from time to time, at the respective quarter sessions, take good and sufficient security of the person or persons by them employed in the said service, for the preservation of the said respective counties from theft and rapine, to answer the damages sustained by any person or persons by his or their neglect or default therein, and to pay and satisfy the same within four months after that proof thereof shall be made by the oath of one or more credible witnesses before the justices of peace of

of the said respective counties, at the next quarter-sessions in the respective county; (3) which oath or oaths the said justice or justices are hereby authorized to administer, so as the goods stolen be entered in one of the books to be kept for that purpose within the space of forty-eight hours after the same shall be stolen or gone; (4) and that books shall be kept for that end in every market-town of the said respective counties, and at such other convenient places therein, and by such person or persons as the said justices of the peace in the said respective counties, at their general sessions of the peace, shall order or appoint.

Books shall be kept in market-towns for entry of goods stolen.

Se^{ct}. 3. "And be it further enacted by the authority aforesaid, That the said several justices of the peace of the said respective counties, at the general quarter sessions of the peace for the said counties respectively, shall yearly, or every two years at the farthest, in open court, make choice of, and appoint such person or persons as they shall respectively think fit, for the said counties respectively, to be employed in the said service.

The justices of peace shall yearly, or every two years appoint persons to be employed in the service.

Se^{ct}. 4. "Provided, That every person and persons employed for the preservation of the said respective counties from theft and rapine, or as treasurer of the said service, do receive the sacrament of the Lord's supper, according to the usage of the church of *England*, in some public church, upon some Lord's day, commonly called *Sunday*, within the space of three months after they shall enter upon such employment, and deliver a certificate thereof to the next quarter-sessions in the respective county where they shall be so employed, and take the oaths of allegiance and supremacy, and make and subscribe the declaration appointed to be made and subscribed in and by one act of this present parliament, intituled, *An act for preventing dangers which may happen from popish recusants*, under the penalties and forfeitures by the said act appointed.

The persons to be employed shall take the sacrament and the oaths of allegiance and supremacy, and make the declaration appointed by 25 Car. 2, c. 2.

STAT. 6. Geo. 2, c. 37, [*A. D.* 1733,] made, among other purposes, "for continuing an act made in the thirteenth and fourteenth years of the reign of King *Charles* the Second, for preventing theft and rapine upon the northern borders of *England*."

Se^{ct}. 9. "And whereas in and by an act made in the eighteenth year of the reign of king *Charles* the second, intituled, *An act to continue a former act to prevent theft and rapine upon the northern borders of England*, the benefit of clergy is taken away from great, known, and notorious thieves and spoil-takers in the counties of *Northumberland* and *Cumberland*, or either of them, during the continuance of the said act, who should be duly convicted for theft done or committed within the said counties, or either of them, or otherwise, that it should and might be lawful for the justices of the assize, and commissioners of *oyer and terminer*, or gaol delivery, before whom such offenders should be convicted within the said counties, or either of them, to transport, or cause to be transported the said offenders, and every of them, into any of his majesty's dominions in *America*, there to remain, and not return: and whereas in and by an act made in the twenty-ninth and thirtieth years of the reign of the said king *Charles*

Powers in the acts 18 Car. 2, c. 3.

and 29 & 30 the second, intituled, *An act for continuing of two former acts for prevent-*
Car. 2, c. 2, *ing of theft and rapine upon the northern borders of England,* the several ju-
concerning *stices of the peace of the said respective counties of Northumberland and*
such rapine, *Cumberland are impowered, from time to time, at the respective quarter-*
continued to *sessions, to take good and sufficient security of the person or persons by*
1 Sept. 1744, *them employed in the said service for the preservation of the said respective*
continued to *counties from theft and rapine, to answer the damages sustained by any*
24 June, 1751, *person or persons by his or their neglect or default therein, and to pay and*
by 17 Geo. 2, *satisfy the same within four months after that proof thereof should have*
c. 40, and *been made by the oath of one or more credible witness or witnesses, be-*
made perpe- *fore the justices of the peace of the said respective counties, at the next*
tual by 31 *quarter-sessions in the respective county (which oath or oaths the said justice*
Geo. 2, c. 40, *or justices are thereby authorized to administer) so as the goods stolen were*
entered in one of the books to be kept for that purpose, within the space
of forty eight hours after the same should have been stolen or gone: and
it is thereby enacted, That books should be kept for that end in every
market town of the said respective counties, and at such other convenient
places therein, and by such person or persons, as the said justices of the
peace in the said respective counties, at their general sessions of the peace,
should order or appoint, and also that the said several justices of the peace
of the said respective counties, at the general quarter sessions of the peace
for the said counties respectively, should yearly, or every two years at the
farthest, in open court, make choice of and appoint such person or persons,
as they should respectively think fit, for the said counties respectively, to
be employed in the said service; which said several clauses, powers, and
authorities, have by experience been found useful and beneficial, and are
expired: be it therefore enacted by the authority aforesaid, That all and
every the several herein before mentioned clauses, powers, and authorities
in the said several acts, for the preventing of theft and rapine upon the
northern borders of England, contained, shall be and are hereby revived,
from the twenty fourth day of June, one thousand seven hundred and
thirty three, and shall continue in force until the first day of September,
which shall be in the year of our Lord one thousand seven hundred and
forty four, and from thence to the end of the then next session of par-
liament, and no longer.

and be deemed *Sec. 10. "And be it further enacted by the authority aforesaid, That*
public acts. *the said several acts, as to the said herein before mentioned clauses, powers,*
and authorities, in the said several acts, for the preventing of theft and
rapine upon the northern borders of England, contained, shall be deemed,
adjudged, and taken to be public acts, and be judicially taken notice
of as such by all judges, justices, and other persons whatsoever.

Nuisance.

NUISANCE, (*nocumentum*, Fr. *nuire*, *nocere*,) signifies not only a thing done, whereby another man is annoyed in his free lands or tenements, but the affize or writ lying for the same, *F. N. B. fol. 183*. And this writ *de nocumento*, or of *nuisance*, is either simply *de nocumento*, or *de parvo nocumento*, and then it is *vicountiel*. *Old Nat. Brev. fol. 108, 109. F. N. B. fol. 183, 184.* Britton calls it *nosance*, whom read, *cap. 61, 62.* Manwood in his *Forest-Laws, cap. 17*, makes three sorts of *nuisance* in the forest. The first is *nocumentum commune*. The second *nocumentum speciale*. The third *nocumentum generale*. See *Reg. Orig. fol. 197 & 199, Co. Rep. Williams's case*. Instead of this now generally are brought actions of trespass, and upon the case. *Cowell, edit. 1727.*

A common nuisance is an offence against the public, either by doing a thing which tends to the annoyance of all the king's subjects, or by neglecting to do a thing which the common good requires. *2 Roll. Abr. 83. 1 Hawk. P. C. 197.*

What shall be deemed a nuisance.

It is clearly agreed, that keeping a bawdy-house is a common nuisance, as it endangers the public peace, by drawing together dissolute and debauched persons; and also has an apparent tendency to corrupt the manners of both sexes, by such an open profession of lewdness. *3 Inst. 205, Kitchen 11, 1 Hawk. P. C. 196.*

Also it hath been adjudged, that this is such an offence, of which a feme covert may be guilty as well as if she were sole; and that she, together with her husband, may be indicted and condemned to the pillory for keeping a bawdy-house; for the keeping the house does not necessarily import property, but may signify that share of government which the wife has in a family as well as the husband; and in this she is presumed to have a considerable part, as those matters are usually managed by the intrigues of her sex. *Salk. 384, The queen v. Williams.*

It is clearly agreed, that all common gaming-houses are nuisances in the eye of the law, being detrimental to the public, as they promote cheating and other corrupt practices, and incite, to idleness, and avaricious ways of gaining property, great numbers, whose time might otherwise be employed for the general good of the community; also it hath been adjudged, that this is such an offence, for which a feme covert may be indicted; for as in the preceding case, the wife may be concerned in acts of bawdry; so here she may be active in promoting gaming, and furnishing the guests with all conveniencies for that purpose. *1 Hawk. P. C. 198, Trim. 2 Geo. 1, the king v. Dixon.*

D d 2

It

Nuisance.

It seems to be the better opinion, that all common stages for rope-dancers, &c. are nuisances, not only because they are great temptations to idleness, but also because they are apt to draw together numbers of disorderly persons, which cannot but be very inconvenient to the neighbourhood. 1 *Mod.* 76, 2 *Keb.* 846, 3 *Keb.* 464, 1 *Vent.* 169, 5 *Mod.* 142, 1 *Hawk. P. C.* 198.

But it seems the better opinion, that playhouses having been originally instituted with a laudable design of recommending virtue to the imitation of the people, and exposing vice and folly, are not nuisances in their own nature, but may only become such by accident; as where they draw together such numbers of coaches or people, &c. as prove generally inconvenient to the places adjacent; or when they pervert their original institution, by recommending vicious and loose characters under beautiful colours to the imitation of the people, and make a jest of things commendable, serious, and useful. *Rushworth's Coll. part 2, vol. 1, fol. 220, 247*; 1 *Roll. Rep.* 109; 5 *Mod.* 142, *Skin.* 625.

It was formerly held, that the erecting a dove-house on a man's own frank-tenement was a nuisance; because the pigeons and doves were to be accounted tame animals, inasmuch as they had *animum revertendi*; and that therefore whoever erected such houses, were answerable for the damages done by them; and because they were not liable to every man's action, to avoid multiplicity of suits, it was thought a matter indictable in the leet; but the contrary opinion prevailed; because it was allowed the lord of the manor might erect, or permit by his licence any person to erect a dove-house; which he could not do, if it were a nuisance, every nuisance being *malum in se*; besides, these animals are rather to be accounted *feræ naturæ*, and by consequence, the only remedy any person had, for the damage sustained by the birds feeding on his ground, was to kill them and take them to himself; which was the proper relief according to the common law; inasmuch as the birds were accounted no man's property. But it is said, that a dove-cote newly erected in a manor, without the lord's licence, is a good ground for an action on the case, at the suit of the lord. 2 *Roll. Abr.* 138; *Poph.* 141; *Cro. Jac.* 382; *Godb.* 259; *Cro. Eliz.* 548; 1 *Roll. Rep.* 136, 200; 2 *Roll. Rep.* 3, 4, 34; 5 *Co.* 104, *Moor.* 238.

It is clearly agreed to be a nuisance to dig a ditch, or make a hedge over-thwart an highway, or to erect a new gate, or to lay logs of timber in it; or generally to do any other act which will render it less commodious: but it seems that a gate, which has continued time out of mind is no nuisance; but that the same may be justified by prescription, being at first intended to have been set up by consent, on a composition with the owner of the land, on the laying out the road; in which case, the people had never any right to a freer passage than what they still enjoy. 1 *Jones*, 221; *Cro. Car.* 184; 1 *Bulst.* 203; 2 *Roll. Abr.* 137.

And as navigable rivers are deemed highways, it is a nuisance to divert part of the river, whereby the current of it is weakened, and made unable

to carry vessels of the same burthen as it could before ; also the laying of timber in a common river, though the soil belong to the party, is equally a nuisance as if the soil was not his, if thereby the passage of boats, &c. is obstructed ; and from hence also it seems to follow, that private stairs, from those houses that stand by the *Thames* into it, are common nuisances ; but it seems, that where there are cuts made in the banks, that are not annoyances to the river, the timber lying there is no nuisance. *Noy*, 103, 3 *Keb.* 640, 759.

It hath been holden to be a common nuisance, to divide a house in a town for poor people to inhabit in ; by reason whereof it will be more dangerous in the time of infection of the plague. 2 *Roll. Abr.* 139, pl. 3.

Bringing a great ship of three hundred tons into *Billinggate* dock, though a common dock, yet being only so for small ships coming with provision to the markets of *London*, is a nuisance, in the same manner, as a man using with his cart a common pack and horse way, so as to plow it up, and thereby render it less convenient to riders, is a nuisance indictable. 6 *Mod.* 145, *the queen v. Leich.*

It seems the better opinion, that a brew-house, glass-house, chandler's shop, or stie for swine, set up in such inconvenient parts of a town, that they cannot but greatly incommode the neighbourhood, are common nuisances. 2 *Roll. Abr.* 139 ; *Cro. Car.* 510 ; *Hutt.* 136 ; *Palm.* 536 ; 1 *Vent.* 26 ; 1 *Keb.* 500 ; 3 *Mod.* 138 ; *Salk.* 458, 460.

Of the indictment for a nuisance ; how a nuisance is to be removed or abated ; and how the offence is punishable.

Every nuisance, punishable by a public prosecution, must be charged to be *ad commune nocumentum*, or to the general annoyance of all the king's subjects ; for if they are only injuries to particular persons, they are left to be redressed by the private actions of the parties aggrieved by them. 2 *Roll. Abr.* 83, 1 *Hawk. P. C.* 197.

And therefore an indictment for surcharging such a common, or inclosing such a piece of ground, or disturbing such a water-course, or doing any other act, not apparently of a public nature, to the nuisance of the inhabitants of such a town, or of *J. S.* and his tenants, is not good. 1 *Hawk. P. C.* 199, and several authorities there cited.

So an indictment in a court leet for keeping a glass-house *ad maximum nocumentum* was quashed ; because it was not a nuisance, unless it had been *ad commune nocumentum*. 1 *Vent.* 26, 2 *Keb.* 500.

So an indictment for stopping a water-course was quashed, being only *ad nocumentum omnium prope inhabitantium*, without saying *& transeuntium*. 1 *Mod.* 107, 3 *Keb.* 284.

But it hath been held, that an indictment for not repairing a bridge, *per quod ligci domini regis transire non possunt, &c. ad nocumentum eorundem*, is sufficient ; for by the king's liege people shall be understood all his liege people. 9 *Co.* 113, 1 *Vent.* 208, 3 *Keb.* 28.

Also

Also an indictment for doing a thing which plainly appears immediately to tend to the prejudice of religion, or of the king; as for breaking the walls of a church, or embezzling the king's treasure, &c. is good, without expressly laying it as a common grievance. 2 *Roll. Abr.* 83—4, 1 *Hawk. P. C.* 198.

So an indictment of a common scold, by the words *communis rixatrix*, hath been held good, though it concluded *ad commune nocumentum diversorum*, instead of *omnium*; because, says *Hawkins*, from the nature of the thing, it cannot but be a common nuisance; and for the same reason, says he, an indictment with such a conclusion, for a nuisance to a river, plainly appearing to be a public and navigable river, or to a way, plainly appearing to be a highway, is sufficient; and perhaps, says he, the authorities which seem to contradict this opinion, might go upon this reason, that in the body of the indictment it did not appear with sufficient certainty, whether the way wherein the nuisance was alleged, were a highway or only a private way; and therefore it shall be intended from the conclusion of the indictment, that it was a private way. 1 *Hawk. P. C.* 198; *viz. Cro. Eliz.* 148; 2 *Keb.* 461; 2 *Roll. Abr.* 83.

As to the manner of removing or abating a nuisance, it is laid down by *Hawkins*, that any one may pull down or otherwise destroy a common nuisance; as a new gate, or even a new house erected in a highway, &c. For if one whose estate is or may be prejudiced by a private nuisance actually erected, as a house hanging over his ground, or stopping his lights, &c. may justify the entering into another's ground, and pulling down and destroying such a nuisance, whether it were erected before or since he came to the estate; surely it cannot but follow *a fortiori*, that any one may lawfully destroy a common nuisance; and as the law is now holden, it seems, that in a plea, justifying the removal of a nuisance, the party need not shew that he did as little damage as need be. 1 *Hawk. P. C.* 199; for which are cited 9 *Roll. Abr.* 144—5; *Cro. Car.* 184; 1 *Jon.* 221; *Yelv.* 142; 5 *Co.* 101, 9 *Co.* 54, *Salk.* 458—9.

If a river be stopped to the nuisance of the country, and none appear bound by prescription to clear it, those who have piscary, and the neighbouring towns, who have a common passage and easement therein, may be compelled to do it. 3 *Aff.* 10, 2 *Roll. Abr.* 137, 1 *Hawk. P. C.* 200, said to have been adjudged.

It seems to be the better opinion, that the court of King's Bench may, by a mandatory writ, prohibit a nuisance, and order that the same shall be abated; and that if the party disobeys the writ, he subjects himself to an attachment; but upon such attachment, for proceeding after the writ of prohibition, there ought to be a declaration, setting forth the nature of the offence, and that the same is a nuisance, and that, notwithstanding the writ of prohibition, the defendant proceeded or committed it: to which, if the defendant can in pleading set forth a sufficient justification, his proceeding *post prohibitionem regiam* will be good in law, and himself discharged of all contempt and costs against the complainant. 3 *Bac. Abr.* 688.

All common nuſances to the public are regularly puniſhable by fine and imprisonment, at the diſcretion of the judges; but, in ſome caſes, corporal puniſhment may be inflicted; as in the caſe of a common ſcold, who is ſaid to be properly puniſhable, by being put into the ducking-ſtool; alſo the offence of keeping a bawdy-houſe is puniſhable, not only with fine and imprisonment, but alſo with ſuch infamous puniſhment, as to the court in diſcretion ſhall ſeem proper. 2 *Rol. Abr.* 84; 1 *Hawk. P. C.* 200; 6 *Mod.* 11, 178, 213; *Salk.* 382.

Alſo a perſon convicted of a nuſance, done to the king's highway, may be commanded by the judgment to remove the nuſance at his own coſts; and *per Hawkins*, it is but reaſonable, that thoſe who are convicted of any other common nuſance, ſhould alſo have the like judgment. 2 *Rol. Abr.* 84, 1 *Hawk. P. C.* 200.

But it is clearly agreed; that common nuſances againſt the public are only puniſhable by a public proſecution; and that no action on the caſe will lie at the ſuit of the party injured; as this would create a multiplicity of actions, one man being as well intitled to bring an action as another; and therefore, in thoſe caſes, the remedy muſt be by indictment at the ſuit of the king. *Co. Lit.* 56, a; 1 *Rol. Abr.* 83, 110; 2 *Rol. Abr.* 140, 141; *Moor*, 180; 4 *Co.* 18; 9 *Co.* 113; 2 *Brownl.* 147; *Vaugb.* 341; *Cro. Eliz.* 664; 3 *Mod.* 204; *Carth.* 191; 1 *Salk.* 150.

But if by ſuch a nuſance the party ſuffer a particular damage, as if by ſtopping up a highway with loggs, &c. his horſe throws him, by which he is wounded or hurt, an action lies. *Co. Lit.* 56; *Cro. Jac.* 446; 1 *Keb.* 847; 1 *Jon.* 157; 1 *Salk.* 15.

Alſo an action lies for continuing a nuſance; as where, for erecting a nuſance 2 *die Febr'*, the defendant pleaded a prior action, brought for erecting a nuſance 20 *die Martii*, and a recovery thereupon, and averred theſe to be the ſame nuſance and erection; and on demurrer the plaintiff had judgment; for though he cannot have a new action for the ſame erection, yet he may for continuing the ſame nuſance. 1 *Salk.* 10.

Oaths.

O A T H, (*juramentum*) is a calling Almighty God to witneſs, that a testimony is true: therefore it is aptly termed, *sacramentum*, a holy band, a ſacred tie, or godly vow. And it is called a *corporal oath*, becauſe the party when he ſwears toucheth with his right hand the holy Evangelists, or book of the New Teſtament. *Co. 3 part Inſt. c.* 74.

A new oath cannot be imposed upon any judge, commissioner, or any other subject, without authority of parliament; but the giving every oath must be warranted by act of parliament, or by the common law time out mind. 2 *Inst.* 479, 3 *Inst.* 165.

And this is the reason why generally there is a clause in the statutes, giving power to the justices to this or the like effect, *viz. which oath such justice is hereby empowered to administer*; though it seems to be clear, that if an act impowers a justice in a summary way to convict an offender by the oath of a witness, it doth (without any more) of necessity give him power to administer the oath to that witness; and that it is sufficiently implied in the words, and necessarily included in the power. For when the law grants any thing, that also is granted, without which the thing itself cannot be. 3 *Burn's Inst.* 207, 12 *Co.* 130, 131.

Serjeant *Wild*, on evidence to a jury in Guildhall, (where, because the witnesses produced were *Jews*, *Keeling* Chief Justice swore them upon the Old Testament only) desired the opinion of the court if this were an oath by the *Stat. 5 Eliz. c. 9*, that might be assigned for perjury, and *per curiam* it is so; and within the general words of *sacrosancta evangelia*; so of the common prayer-book that hath the epistles and gospels, *contra* by *Windham* of a psalm-book only. 2 *Keb.* 314.

By the ancient law in the time of king *Arthur*, and afterwards revived in the time of king *Edgar*, every man of the age of twelve years or upwards, ought to have been sworn to the king in the tourn, or in the lect. *Co. Lit.* 68, *b.* 172, *b.* 7 *Co.* 6, *b.* 7, *a.* 1 *Bulstr.* 199.

But the clergy were not obliged to take the oath of allegiance till the reformation, any further than doing homage to the king for the lands held of him in right of the church. 1 *Hale's Hist.* 71, 72.

Lord *Hale*, speaking of the ancient oath of allegiance, which continued above six hundred years, says, that therein the prudence of the common law is observable, that it was short and plain, not intangled with long and intricate clauses or declarations, but that the sense of it was obvious to the most common understanding, and yet withal comprehensive of the whole duty of a subject to his prince. 1 *Hale's Hist.* 63. The oath of supremacy came in, upon abolishing the papal authority at the reformation. *Read on Stat. tit. Oath.*

STAT. 25 *Car. 2, c. 2.* [*A. D.* 1672, *intituled*] “An act for preventing dangers which may happen from popish recusants.”

“*Sec. 1.* “For preventing dangers which may happen from popish recusants, and quieting the minds of his majesty's good subjects; (2) be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and the commons in this present parliament assembled, and by the authority of the same, That all and every person or persons, as well peers as commoners, that shall bear any office or offices, civil or military, or shall receive any pay, salary, fee, or wages,

All persons
that shall bear
any offices or
places of trust

wages, by reason of any patent or grant from his majesty, or shall have under his majesty's command or place of trust from, or under his majesty, or from any of his majesty's predecessors, or by his or their authority, or by authority derived from him or them, within the realm of *England*, dominion of *Wales*, or town of *Berwick upon Tweed*, or in his majesty's navy, or in the several islands of *Jersey* and *Guernsey*, or shall be of the household, or in the service or employment of his majesty, or of his royal highness the duke of *York*, who shall inhabit, reside, or be within the city of *London* or *Westminster*, or within thirty miles distant from the same, on the first day of *Easter* term that shall be in the year of our Lord one thousand six hundred and seventy-three; or at any time during the said term, all and every the said person and persons shall personally appear before the end of the said term, or of *Trinity* term next following, in his majesty's high court of Chancery, or in his majesty's court of King's Bench, and there in public and open court, between the hours of nine of the clock and twelve in the forenoon, take the several oaths of supremacy and allegiance; which oath of allegiance is contained in the statute made in the third year of king *James*, by law established; (3) and during the time of the taking thereof by the said person and persons, all pleas and proceedings in the said respective courts shall cease; (4) and that all and every of the said respective persons and officers, not having taken the said oaths in the said respective courts aforesaid, shall on or before the first day of *August*, one thousand six hundred and seventy-three, at the quarter-sessions for that county or place where he or they shall be, inhabit or reside, on the twentieth day of *May*, take the said oaths in open court, between the said hours of nine and twelve of the clock in the forenoon; (5) and the said respective officers aforesaid, shall also receive the sacrament of the Lord's supper, according to the usage of the church of *England*, at or before the first day of *August*, in the year of our Lord one thousand six hundred and seventy-three, in some parish church, upon some Lord's day, commonly called *Sunday*, immediately after divine service and sermon.

under his majesty, &c. must take the oaths of allegiance and supremacy, and the following oaths, &c.

When and where to appear and make oath.

This act extended to deputies by 1 Geo. 1, Stat. 2, c. 13, f. 18.

To receive the sacrament according to the usage of the church of *England*.

SECT 2. "And be it further enacted by the authority aforesaid, That All persons to be admitted into any office, &c. after the first day of *Easter* term, to take the said oaths, &c. See 2 Geo. 2, c. 31, f. 9. Carthew 478. 2 Mod. 299. Comberb. 21. Persons beyond sea helped by 13 Geo. 1, c. 29, f. 1. When, and where to be taken.

all and every person or persons that shall be admitted, entred, placed, or taken into any office or offices, civil or military, or shall receive any pay, salary, fee or charges, by reason of any patent or grant of his majesty, or shall have command or place of trust, from, or under his majesty, his heirs or successors, or by his or their authority, or by authority derived from him or them, within this realm of *England*, dominion of *Wales*, or town of *Berwick upon Tweed*, or in his majesty's navy, or in the several islands of *Jersey* and *Guernsey*, or that shall be admitted into any service or employment in his majesty's, or royal highness's household or family, after the first day of *Easter* term aforesaid, and shall inhabit, be or reside, when he or they is, or are so admitted or placed, within the cities of *London* or *Westminster*, or within thirty miles of the same, shall take the said oaths aforesaid, in the said respective court or courts aforesaid, in the next term after such his or their admittance or admittances into the office or offices, employment or employments aforesaid, between the hours aforesaid, and

Jones Sir T. 81. no other, and the proceedings to cease, as aforesaid: (2) and that all and every such person or persons to be admitted after the said first day of *Easter* term, as aforesaid, not having taken the said oaths in the said courts aforesaid, shall at the quarter-sessions for that county or place where he or they shall reside, next after such his admittance or admittances into any of the said respective offices or employments aforesaid, take the said

Explained by 1 Geo. 2, Stat. 2, c. 23. f. 6. Carthew 320. several and respective oaths as aforesaid: (3) and all and every such person and persons so to be admitted, as aforesaid, shall also receive the sacrament of the Lord's supper, according to the usage of the church of *England*, within three months after his or their admittance in, or receiving their said authority and employment, in some public church, upon some Lord's day, commonly called Sunday, immediately after divine service and sermon.

A certificate to be delivered into court, of his receiving the sacrament. *Sec. 3.* " And every of the said persons in the respective court where he takes the said oaths, shall first deliver a certificate of such his receiving the said sacrament, as aforesaid, under the hands of the respective minister and church-warden, and shall then make proof of the truth thereof, by two credible witnesses at the least, upon oath; all which shall be enquired of, and put upon record in the respective courts.

Whosoever shall refuse to take the oaths shall be adjudged incapable of any other office. *Sec. 4.* " And be it further enacted by the authority aforesaid, That all and every the person or persons aforesaid, that do or shall neglect or refuse to take the said oaths and sacrament in the said courts and places, and at the respective times aforesaid, shall be *ipso facto* adjudged incapable and disabled in law, to all intents and purposes whatsoever, to have, occupy or enjoy the said office or offices, employment or employments, or any part of them, or any matter or thing aforesaid, or any profit or advantage appertaining to them, or any of them; (2) and every such office and place, employment and employments shall be void, and is hereby adjudged void.

No person shall execute any office, after refusal to take the oaths. *Sec. 5.* " And be it further enacted, That all and every such person or persons that shall neglect or refuse to take the said oaths, or the sacrament, as aforesaid, within the times, and in the places aforesaid, and in the manner aforesaid; and yet after such neglect or refusal, shall execute any of the said offices or employments, after the said times expired, wherein he

The penalty. 1 Lutw. 159, 162. Shall not prosecute any suit in law or equity, or be guardian to any child, or executor, &c. The forfeiture. or they ought to have taken the same, and being thereupon lawfully convicted, in, or upon any information, presentment or indictment, in any of the king's courts at *Westminster*, or at the assizes, every such person and persons shall be disabled from thenceforth, to sue, or use any action, bill, plaint or information in course of law, or to prosecute any suit in any court of equity, or to be guardian of any child, or executor or administrator of any person, or capable of any legacy, or deed of gift, or to bear any office within this realm of *England*, dominion of *Wales*, or town of *Berwick upon Tweed*; (2) and shall forfeit the sum of five hundred pounds, to be recovered by him or them that shall sue for the same, to be prosecuted by any action of debt, suit, bill, plaint, or information in any of his majesty's courts at *Westminster*, wherein no escoin, protection or wager of law shall lie.

Sec.

Sec. 6. " And be it further enacted by the authority aforesaid, That the names of all and singular such persons and officers aforesaid, that do or shall take the oaths aforesaid, shall be in the respective courts of chancery, and king's bench, and the quarter-sessions inrolled, with the day and time of their taking the same, in rolls made and kept only for that intent and purpose, and for no other; (2) the which rolls, as for the court of chancery, shall be publicly hung up in the office of the petty-bag, and the roll for the king's bench in the crown-office of the said court and in some public place in every quarter sessions, and there remain during the whole term, every term, and during the whole time of the said sessions, in every quarter-sessions, for every one to resort to, and look upon, without fee or reward; (3) and likewise none of the person or persons aforesaid shall give or pay as any fee or reward to any officer or officers belonging to any of the courts, as aforesaid, above the sum of twelve-pence for his or their entry of his or their taking of the said oaths aforesaid.

The names of persons taking the oaths, where to be registred.

The fees allowed.

Sec. 7. " And further, That it shall and may be lawful to and for the respective courts aforesaid, to give and administer the said oaths aforesaid, to the person or persons aforesaid, in manner, as aforesaid; and upon the due tender of any such person or persons to take the said oaths, the said courts are hereby required and enjoined to administer the same.

Upon tender made to the courts, they are obliged to administer the oaths.

Sec. 8. " And be it further enacted, That if any person or persons not bred up by his or their parent or parents from their infancy in the popish religion, and professing themselves to be popish recusants, shall breed up, instruct, or educate his or their child or children, or suffer them to be instructed, or educated in the popish religion, every such person being thereof convicted, shall be from thenceforth disabled of bearing any office or place of trust or profit, in church or state. (2) And all such children as shall be so brought up, instructed, or educated, are and shall be hereby disabled of bearing any such office or place of trust or profit, until he and they be perfectly reconciled and converted to the church of *England*, and shall take the oaths of supremacy and allegiance aforesaid, before the justices of the peace, in the open quarter-sessions of the county or place where they shall inhabit, and thereupon receive the sacrament of the Lord's supper, after the usage of the church of *England*, and obtain a certificate thereof under the hands of two or more of the said justices of the peace.

No person not bred up in the popish religion by his parents shall breed up or suffer his children to be bred up in the popish religion. The penalty.

Sec. 9. And be it further enacted by the authority aforesaid, That at the same time when the persons concerned in this act shall take the aforesaid oaths of supremacy and allegiance, they shall likewise make and subscribe this declaration following, under the same penalties and forfeitures as by this act is appointed;

At the taking of the oaths to subscribe the declaration following.

(2) **I** *A. B.* do declare, That I do believe there is not any transubstantiation in the sacrament of the Lord's supper, or in the elements of bread and wine, at or after the consecration thereof by any person whatsoever.

The declaration.

A register to be kept of the subscription. This act not to extend to peerage,

or creation-money,

impost, pensions, &c.

or offices of inheritance,

or to make void any pension granted to any person instrumental in preserving the king at Worcester.

Popish officers who have offices of inheritance, must appoint deputies who must take the oaths, &c.

and subscribe.

Sec. 10. "Of which subscription there shall be the like register kept, as of the taking the oaths aforesaid.

Sec. 11. "Provided always, That neither this act, nor any thing therein contained, shall extend, be judged or interpreted any ways to hurt or prejudice the peerage of any peer of this realm, or to take away any right, power, privilege, or profit, which any person (being a peer of this realm) hath or ought to enjoy by reason of his peerage, either in time of parliament, or otherwise; (2) or to take away creation-money, or bills of impost, nor to take away or make void any pension or salary granted by his majesty to any person for valuable and sufficient consideration for life, lives or years, other than such as relate to any office, or to any place of trust under his majesty, and other than pensions of bounty or voluntary pensions; (3) nor to take away, or make void any estate of inheritance granted by his majesty, or any his predecessors, to any person or persons, of, or in any lands, rents, tithes, or hereditaments, not being offices; (4) nor to take away, or make void any pension or salary already granted by his majesty to any person who was instrumental in the happy preservation of his sacred majesty after the battle at *Worcester*, in the year one thousand six hundred fifty-one, until his majesty's arrival beyond the seas; (5) nor to take away or make void the grant of any office or offices of inheritance, or any fee, salary, or reward for executing such office or offices, or thereto any way belonging, granted by his majesty, or any his predecessors, to, or enjoyed, or which hereafter shall be enjoyed by any person or persons who shall refuse or neglect to take the said oaths, or either of them, or to receive the sacrament, or to subscribe the declaration mentioned in this act, in manner therein expressed: (6) nevertheless so as such person or persons having or enjoying any such office or offices of inheritance, do or shall substitute and appoint his or their sufficient deputy or deputies (which such officer or officers respectively are hereby empowered from time to time to make, or change, any former law or usage to the contrary notwithstanding) to exercise the said office or offices, until such time as the person or persons having such office or offices, shall voluntarily in the court of chancery, before the lord chancellor, or lord keeper for the time being, or in the court of king's bench, take the said oaths, and receive the sacrament according to law, and subscribe the said declaration, and so as all and every the deputy and deputies so as aforesaid to be appointed, take the said oaths, receive the sacrament, and subscribe the said declaration from time to time, as they shall happen to be so appointed, in manner as by this act such officers whose deputies they be, are appointed to do; and so as such deputies be from time to time approved of by the king's majesty under his privy signet: (7) but that all and every the peers of this realm shall have, hold, and enjoy what is provided for, as aforesaid, and all and every other person or persons, before-mentioned, denoted or intended within this proviso, shall have, hold, and enjoy what is provided for, as aforesaid, notwithstanding any incapacity or disability mentioned in this act.

Sec.

Señ. 12. “ Provided also, That the said peers and every of them may take the said oaths, and make the said subscription, and deliver the said certificates before the peers sitting in parliament, if the parliament be sitting within the time limited for doing thereof, and in the intervals of parliament in the high court of chancery, in which respective courts all the said proceedings are to be recorded in manner aforesaid. The peers may take the oaths, &c. in parliament.

Señ. 13. “ Provided always, That no married woman, or person under the age of eighteen years, or being beyond, or upon the seas, or found by the lawful oaths of twelve men, to be *non compos mentis*, and so being and remaining at the end of the *Trinity* term in the year of our Lord one thousand six hundred and seventy-three, having any office, shall by virtue of this act, lose or forfeit any such his or her office (other than such married woman during the life of her husband only) for any neglect or refusal of taking the oaths, and doing the other things required by this act to be done by persons having offices, so as such respective persons within four months after the death of the husband, coming to the age of eighteen years, returning into this kingdom, and becoming of sound mind, shall respectively take the said oaths, and perform all other things in manner as by this act is appointed for persons to do, who shall happen to have any office or offices to them given or fallen after the end of the said *Trinity* term. A saving for married women, &c.

Señ. 14. “ Provided also, That any person who by his or her neglect or refusal, according to this act, shall lose or forfeit any office, may be capable by a new grant of the said office, or of any other, and to have and hold the same again, such person taking the said oaths, and doing all other things required by this act, so as such office be not granted to, and actually enjoyed by some other person at the time of the regranting thereof. Any person forfeiting his office by virtue hereof, may upon taking of the oaths, &c. be capable of a new grant thereof.

Señ. 15. “ Provided also, That nothing in this act contained shall extend to make any forfeiture, disability, or incapacity in, by, or upon any non-commission officer or officers in his majesty's navy, if such officer or officers shall only subscribe the declaration therein required, in manner as the same is directed. Not to extend to non-commission officers in the navy, if they subscribe the declaration.

Señ. 16. “ Provided also, That nothing in this act contained, shall extend to prejudice *George* earl of *Bristol*, or *Anne* countess of *Bristol* his wife, in the pension or pensions granted to them by patent under the great seal of *England*, bearing date the sixteenth day of *July*, in the year of our Lord one thousand six hundred sixty and nine, being in lieu of a just debt due to the said earl from his majesty, particularly expressed in the said patent. A saving for the pensions granted to the earl of *Bristol* and his lady.

Señ. 17. “ Provided also, That this act, or any thing therein contained, shall not extend to the office of any high constable, petty constable, tythingman, headborough, overseer of the poor, churchwardens, surveyor of the highways, or any like inferior civil office, or to any office of forester, or keeper of any park, chase, warren, or game, or of bailiff of any manor or lands, or to any like private offices, or to any person or persons having only any the before-mentioned, or any the like offices. Not to extend to constables, tythingmen, church wardens, &c. or private officers.

STAT.

STAT. 30 Car. 2, ft. 2, c. 1. [A. D. 1677, intituled] "An act for the more effectual preserving the king's person and government, by disabling papists from sitting in either house of parliament."

"Forasmuch as divers good laws have been made for preventing the increase and danger of popery in this kingdom, which have not had the desired effects, by reason of the free access which popish recusants have had to his majesty's court, and by reason of the liberty which of late some of the recusants have had and taken to sit and vote in parliament.

SECT. 2. "Wherefore, and for the safety of his majesty's royal person and government, be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and of the commons in this present parliament assembled, and by the authority of the same, That from and after the first day of *December*, which shall be in the year of our Lord God one thousand six hundred seventy and eight, no person that now is, or hereafter shall be a peer of this realm, or member of the house of peers, shall vote, or make his proxy in the house of peers, or sit there during any debate in the said house of peers: (2) nor any person that now is, or hereafter shall be a member of the house of commons, shall vote in the house of commons, or sit there during any debate in the said house of commons, after their speaker is chosen; (3) until such peer or member shall from time to time respectively, and in manner following, first take the several oaths of allegiance and supremacy, and make, subscribe, and audibly repeat this declaration following:

For these oaths, see 1 W. & M. ft. 1, c. 1, s. 3, &c.

The declaration.

SECT. 3. "I *A. B.* do solemnly and sincerely in the presence of God, profess, testify and declare, that I do believe that in the sacrament of the Lord's Supper, there is not any transubstantiation of the elements of bread and wine into the body and blood of Christ, at, or after the consecration thereof, by any person whatsoever: (2) and that the invocation, or adoration of the Virgin *Mary*, or any other saint, and the sacrifice of the mass, as they are now used in the church of *Rome*, are superstitious and idolatrous. (3) And I do solemnly in the presence of God, profess, testify and declare, That I do make this declaration, and every part thereof, in the plain and ordinary sense of the words read unto me, as they are commonly understood by *English* protestants, without any evasion, equivocation, or mental reservation whatsoever, and without any dispensation already granted me for this purpose by the pope, or any other authority or person whatsoever, or without any hope of any such dispensation from any person or authority whatsoever, or without thinking that I am, or *can* be acquitted before God or man, or absolved of this declaration, or any part thereof, although the pope, or any other person or persons, or power whatsoever, shall dispense with or annul the same, or declare that it was null or void from the beginning.

This declaration to be subscribed by all professed papists at their age of eighteen, by 1 Anne, Stat. 1, c. 32, sect. 7.

Señ. 4. “ Which said oaths and declaration shall be in this and every succeeding parliament solemnly and publickly made and subscribed betwixt the hours of nine in the morning and four in the afternoon, by every such peer and member of the house of peers, at the table in the middle of the said house, before he take his place in the said house of peers, and whilst a full house of peers is there with their speaker in his place ; (2) and by every such member of the house of commons, at the table in the middle of the said house, and whilst a full house of commons is there duly sitting with their speaker in his chair ; (3) and that the same be done in either house in such like order or method, as each house is called over by respectively. The time and place of taking the oaths, and making and subscribing the declaration.

Señ. 5. “ And be it further enacted, That from and after the said first day of *December*, every peer of this realm, and member of the house of peers, and every peer of the kingdom of *Scotland*, or of the kingdom of *Ireland*, being of the age of one and twenty years or upwards, not having taken the said oaths, and made and subscribed the said declaration ; (2) and every member of the said house of commons, not having, as aforesaid, taken the said oaths, and made and subscribed the said declaration ; (3) and every person now, or hereafter convicted of popish recusancy, (4) who hereafter shall at any time after the said first day of *December*, come advisedly into, or remain in the presence of the king’s majesty, or queen’s majesty, or shall come into the court or house where they or any of them reside, as well during the reign of his present majesty (whose life God long preserve) as during the reigns of any his royal successors kings or queens of *England* ; (5) shall incur and suffer all the pains, penalties, forfeitures, and disabilities in this act mentioned or contained ; (6) unless such peer, member or person so convicted, do respectively in the next term after such his coming or remaining, take the said oaths, and make and subscribe the said declaration in his majesty’s high court of chancery, between the hours of nine and twelve in the forenoon. Members of parliament not swearing and declaring, as aforesaid, and recusants convicted, forbidden the king’s or queen’s presence.

Señ. 6. “ And be it further enacted by the authority aforesaid, That if any person that now is, or hereafter shall be a peer of this realm, or member of the house of peers, or member of the house of commons, shall presume to do any thing contrary to this act, or shall offend in any of the cases aforesaid, that then every such peer and member so offending, shall from thenceforth be deemed and adjudged a popish recusant convicted to all intents and purposes whatsoever ; (2) and shall forfeit and suffer as a popish recusant convicted ; (3) and shall be disabled to hold or execute any office or place of profit or trust, civil or military, in any of his majesty’s realms of *England* or *Ireland*, dominion of *Wales*, or town of *Berwick* upon *Tweed*, or in any of his majesty’s islands or plantations to the said realms belonging ; (4) and shall be disabled from thenceforth to sit and vote in either house of parliament, or make a proxy in the house of peers ; (5) or to sue or use any action, bill, plaint or information in course of law, or to prosecute any suit in any court of equity ; (6) or to be guardian of any child, or executor or administrator of any person ; (7) or capable of any legacy or deed The penalty upon members of parliament offending contrary to this act.

deed of gift; (8) and shall forfeit for every wilful offence against this act, the sum of five hundred pounds, to be recovered and received by him or them that shall sue for the same; and to be prosecuted by any action of debt, suit, bill, plaint or information in any of his majesty's courts at *Westminster*, wherein no essoin, protection or wager of law shall lie.

Either house
of parliament
may cause
any of their
members to
swear and sub-
scribe, as
aforesaid.

Sec. 7. "And be it further enacted by the authority aforesaid, That from the said first day of *December*, it shall and may be lawful to and for the house of peers, and house of commons, or either of them respectively, as often as they or either of them shall see occasion, either in this present parliament, or any other hereafter to be holden, to order and cause all, or any of the members of their respective houses of parliament, openly in their respective houses of parliament, to take the said oaths, and to make and subscribe the said declaration at such times, and in such manner as they shall appoint. (2) And if any peer shall contrary to such order made by their said house, wilfully presume to sit therein, without taking the said oaths, and subscribing the said declaration, according to the said order, every such peer, or member of the house of peers, so presuming to sit, shall be adjudged, and is hereby declared to be incapable and disabled in law to all intents and purposes whatsoever, to sit in the said house of peers, and give any voice therein, either by proxy, or otherwise howsoever, during that parliament: (3) And if any member or members of the house of commons, shall contrary to such order made by their house, wilfully presume to sit therein, without taking the said oaths, and making and subscribing the said declaration, every such member or members of the house of commons, so presuming to sit, shall be adjudged, and is hereby declared to be incapable, and disabled in law, to all intents and purposes whatsoever, to sit in the said house of commons, or give any voice therein during that parliament.

The places of
members of
the house of
commons dis-
abled to vote,
shall be void,
and writs issue
out for new
elections.

Sec. 8. "And be it enacted, That in every case where any member or members of the house of commons shall by virtue of this act be disabled to sit or vote in the house of commons, then, and in every such case, without any further conviction, or other proceedings against such member or members, the place or places for which they or any of them were elected, is hereby declared void; (2) and a new writ or writs shall issue out of the high court of chancery, by warrant or warrants from the speaker of the house of commons for the time being, and by order of the said house, for the election of a new member or members, to serve in the house of commons, in the place or places of such member or members so disabled, to all intents and purposes, as if such member or members were naturally dead.

The king's
and queen's
sworn servants
shall swear as
aforesaid, and
make and sub-
scribe the said
declaration.

Sec. 9. "And be it further enacted by the authority aforesaid, That from and after the first day of *December*, one thousand six hundred seventy and eight, every person then being, and who after that time shall be a sworn servant to the king's or queen's majesty, not having before that time duly taken the oaths, and made and subscribed the declaration contained in an act, intituled, *An act for preventing dangers which may happen from*

from *popish recusants*, shall take the said oaths, and make and subscribe the declaration before expressed, in his majesty's high court of chancery, in the manner aforesaid, either in the next term after the said first day of *December*, or in the next term after any such person shall be so sworn a servant; or in case of lawful impediment by sickness, proved upon oath, and allowed to be such, under the hand of the lord chancellor, or lord keeper for the time being, then in the next term after such impediment removed; (2) and if any such person shall refuse or neglect to do the same, and yet after such refusal or neglect, shall advisedly come into, or remain in the presence of the king's or queen's majesty, or shall come into the court or house where they or any of them reside, as well during the reign of his present majesty, as during the reigns of his and their royal successors, kings or queens of *England*, and every of them, every such person shall be disabled to hold any place as such sworn servant, and shall incur and suffer all the pains, penalties, forfeitures and disabilities in this act mentioned or contained.

25 Car. 2, c. 2.
Repealed by
2 Geo. 2, c. 31, sect. 9.

Sec. 10. " Provided, That nothing in this act shall relate to, or have any effect upon any person being a natural-born subject of the king of *Portugal*, who now is or hereafter shall be a sworn servant to the queen's majesty, not exceeding nine in number at any one time: (2) nor to such women servants as her majesty shall under her hand and seal from time to time for that purpose be pleased to nominate, the said women servants so nominated, not exceeding the number of nine at any one time.

A provision
for the queen
to have 18
popish ser-
vants.

Sec. 11. " And be it enacted, That during the time of taking of the said oaths, and making and subscribing the said declaration, all other matters and proceedings, as well in the said houses of parliament, as in the said court, shall cease; (2) and the said oaths, declaration, and subscription, together with a schedule of the names of the persons who shall by virtue of this act take and subscribe the same, shall be made, entred and filed in parchment rolls from time to time, duly provided for that purpose by the clerk of the house of lords, and the clerk of the house of commons, and by the clerk of the petty bag in chancery, for the several and respective uses, as aforesaid; (3) and none of the peers or members shall give or pay any fee or reward to any such clerk, above the sum of twelve pence for the entry of his taking the said oaths, and making and subscribing the said declaration: (4) all which rolls respectively the said clerks are hereby required from time to time, without any fee or reward, to shew to any person desiring to look upon the same: (5) and the said house of peers, and house of commons, and court of chancery, are hereby severally impowered and required in the first place, all other business laid aside, to administer the said oaths, declaration and subscription respectively, as occasion shall be from time to time, to all and every the person and persons aforesaid, duly demanding the same, according to the directions, purport and meaning of this present act.

Sec. 12. " Provided always, That this act, nor any thing herein contained, shall extend to the prejudice of any person for coming into, or remaining

Such as have
licence from
his privy

counsellors,
may come in-
to the king's
or queen's
presence, not-
withstanding
this act.

maining in the presence of the king or queen's majesty, who shall first have licence so to do, by any warrant under the hands and seals of six or more privy counsellors, by order of his majesty's privy council, upon some urgent occasion therein to be expressed, so as such licence exceed not the space of ten days, and that the said licence be first filed and put upon record in the office of the petty bag in chancery, for any body to view without fee or reward, and no person be licensed for above the number of thirty days in any one year.

Offenders
against this
act that shall
take the said
oaths, &c.
shall be dis-
charged of all
penalties, &c.

SECT. 13. " Provided nevertheless, That if any offender contrary to this act, shall at any time after such offence take the said oaths, and make and subscribe the said declaration in his majesty's high court of chancery, and in the manner aforesaid, every such person shall be from thenceforth freed and discharged of and from all seizures, penalties and losses which he might otherwise sustain or bear for or by reason of being a popish recusant convict by virtue of this act; (2) and shall be freed and discharged from all disabilities and incapacities incurred thereby; (3) so as such freedom and discharge extend not to restore any such person to any office or place filled and supplied upon voidance by this act; (4) nor to any other officer, till after the expiration of one year, from the taking the said oath, and making the declaration aforesaid; (5) nor to make void, or at any time discharge the said forfeiture of five hundred pounds, incurred as aforesaid.

A proviso for
the duke of
York,

SECT. 14. " Provided always, That nothing in this act contained, shall extend to his royal highness the duke of York.

STAT. 1 Will. & Ma. c. 18, s. 13, containing the quakers' profession of their belief. See title **Dissenters**, page 754, vol. I.

STAT. 7 & 8 Will. 3, c. 34. [A. D. 1696, intituled] " An act that the solemn affirmation and declaration of the people called *quakers*, shall be accepted instead of an oath in the usual form."

Quakers in-
stead of an
oath to make
the following
affirmation,

Carthew, 448.

" Whereas divers dissenters, commonly called *quakers*, refusing to take an oath in courts of justice, and other places, are frequently imprisoned, and their estates sequestred by process of contempt issuing out of such courts, to the ruin of themselves and families: for remedy thereof, be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same; That from and after the fourth day of May, which shall be in the year of our Lord one thousand six hundred ninety-six, every quaker within this kingdom of England, dominion of Wales, or town of Berwick upon Tweed, who shall be required upon any lawful occasion to take an oath in any case, where by law an oath is required, shall, instead of the usual form, be permitted to make his or her solemn affirmation or declaration, in these words following, viz,

I A. B. do declare, in the presence of Almighty God, the witness of the truth of what I say.

Sett. 2. " Which said solemn affirmation or declaration shall be adjudged and taken, and is hereby enacted and declared to be of the same force and effect, to all intents and purposes, in all courts of justice, and other places, where by law an oath is required within this kingdom of *England*, dominion of *Wales*, or town of *Berwick upon Tweed*, as if such quaker had taken an oath in the usual form. which is to be of the same force in law as an oath.

Sett. 3. " And be it further enacted by the authority aforesaid, That if any quaker, making such solemn affirmation or declaration, shall be lawfully convicted, wilfully, falsely, and corruptly to have affirmed or declared any matter or thing, which, if the same had been in the usual form, would have amounted to wilful and corrupt perjury, every such quaker so offending shall incur the same penalties and forfeitures, as by the laws and statutes of this realm are enacted against persons convicted of wilful and corrupt perjury. Penalty on false affirmation.

Sett. 4. " And whereas, by reason of a pretended scruple of conscience, quakers do refuse to pay tithes and church rates : be it enacted by the authority aforesaid, That where any quaker shall refuse to pay or compound for his great or small tithes, or to pay any church rates, it shall and may be lawful to and for the two next justices of peace of the same county, (other than such justice of the peace as is patron of the church or chapel, whence the said tithes do or shall arise, or any ways interested in the said tithes) upon the complaint of any parson, vicar, farmer, or proprietor of tithes, churchwarden or churchwardens, who ought to have, receive, or collect the same, by warrant under their hands and seals, to convene before them such quaker or quakers neglecting or refusing to pay or compound for the same, and to examine upon oath (which oath the said justices are hereby impowered to administer) or in such manner as by this act is provided, the truth and justice of the said complaint, and to ascertain and state what is due and payable by such quaker or quakers to the party or parties complaining, and by order under their hands and seals to direct and appoint the payment thereof, so as the sum ordered, as aforesaid, do not exceed ten pounds ; and upon refusal by such quaker or quakers to pay according to such order, it shall and may be lawful to and for any one of the said justices, by warrant under his hand and seal, to levy the money, thereby ordered to be paid, by distress and sale of goods of such offender, his executors or administrators, rendering only the overplus to him, her, or them, the necessary charges of distraining being thereout first deducted and allowed by the said justice ; and any person finding him, her, or themselves aggrieved by any judgment given by such two justices of the peace, shall and may appeal to the next general quarter sessions to be held for the county, riding, city, liberty, or town corporate ; and the justices of the peace there present, or the major part of them, shall proceed finally If quakers refuse to pay tithes, &c. justices, on stating what is due, may compel them thereto, if the sum be under 10*l*. Persons aggrieved may appeal to the quarter sessions, who are finally to determine.

If judgment
be continued,
to give costs.

to hear and determine the matter, and to reverse the said judgment, if they shall see cause; and if the justices then present, or the major part of them, shall find cause to continue the judgment given by the first two justices of the peace, they shall then decree the same by order of sessions, and shall also proceed to give such costs against the appellant, to be levied by distress and sale of the goods and chattels of the said appellant, as to them shall seem just and reasonable; and no proceedings or judgment had or to be had by virtue of this act shall be removed or superseded by any writ of *certiorari*, or other writ out of his majesty's courts at *Westminster*, or any other court whatsoever, unless the title of such tithes shall be in question.

No judgment
to be super-
seded.

No distress
till appeal be
determined.

Señ. 5. "Provided always, That in case any such appeal be made as aforesaid, no warrant of distress shall be granted until after such appeal be determined.

Quakers not
to be evidence
in criminal
causes, &c.

*This act was
made perpetual
by 1 Geo. 1,
stat. 2, c. 6,
but is altered
by 1 Geo. 1, stat.
2, c. 13, s. 4, &
3 Geo. 1, c. 6.*

Señ. 6. "Provided, and be it enacted, That no quaker or reputed quaker shall by virtue of this act be qualified or permitted to give evidence in any criminal causes, or serve on any juries, or bear any office or place of profit in the government; any thing in this act contained to the contrary in any wise notwithstanding.

Señ. 7. "Provided, That this act shall continue in force for the space of seven years, and from thence to the end of the next session of parliament, and no longer.

STAT. I. *Geo 1, st. 2, c. 13.* [*A. D. 1714, intituled*] "An act for the further security of his majesty's person and government, and the succession of the crown in the heirs of the late princess *Sophia*, being protestants; and for extinguishing the hopes of the pretended prince of *Wales*, and his open and secret abettors."

Reciting 12 &
13 W. 3, c. 2.

Señ. 1. "Whereas by an act made in the twelfth year of the reign of his late majesty king *William*, of glorious and immortal memory, intituled, *An act for the further limitation of the crown, and better securing the rights and liberties of the subject*; it was enacted, That the crown and regal government of the kingdoms of *England*, *France*, and *Ireland*, and the dominions thereunto belonging, with the royal state and dignity of the said realms, and all honours, styles, titles, regalities, prerogatives, powers, jurisdictions, and authorities, to the same belonging and appertaining, after the decease of his said majesty, and of the princess *Anne* of *Denmark*, and in default of issue of the said princess *Anne* of *Denmark*, and of his said majesty respectively, should be, remain, and continue to the most excellent princess *Sophia*, electress and dutchess-dowager of *Hanover*, daughter of the most excellent princess *Elizabeth*, late queen of *Bohemia*, daughter of our late sovereign lord king *James* the first, and the heirs of the body of the said princess *Sophia*, being protestants: and whereas also an act was made in *England* in the thirteenth and fourteenth years of the reign of the said king *William*, intituled, *An act for the further security of his majesty's person, and the succession of the crown in the protestant line*; and for extinguishing the hopes

13 & 14 W.
3, c. 6.

*hopes of the pretended prince of Wales, and all other pretenders, and their open and secret abettors, whereby, amongst other things, it was provided, That all and every person and persons, mentioned in the said last recited act, should take the oath therein mentioned, and subscribe the same, in the manner, at the times and places, and under the pains and penalties therein expressed; and upon the demise of his late majesty king William, there was another act made in the first year of her late majesty queen Anne, intituled, An act to declare the alterations in the oath appointed to be taken by the act, in- 1 Annæ, stat. tituled, An act for the further security of his majesty's person, and the succession 1, c. 22. of the crown in the protestant line; and for extinguishing the hopes of the pretended prince of Wales, and all other pretenders, and their open and secret abettors; and for declaring the association to be determined: and for the same end there was another act passed in the fourth year of her said late majesty queen Anne, intituled, An act for the better security of her majesty's person and go- 4 Annæ, c. 8. vernment, and of the succession to the crown of England in the protestant line: and whereas by the Treaty of Union, and second article thereof, it is provided, That the succession to the monarchy of the united kingdom of Great Britain, and of the dominions thereunto belonging, after her said late most sacred majesty queen Anne, and in default of issue of her said majesty, should be, remain, and continue to the most excellent princess Sophia, electress and duchess dowager of Hanover and the heirs of her body, being protestants, upon whom the crown of England stood settled by the aforesaid act, made in England in the twelfth year of the reign of 12 & 13 W. 3, his late majesty king William; pursuant to which treaty and state of union, c. 2. there were sundry acts made in the reign of her said late majesty queen Anne, for taking certain oaths and declarations for security of her majesty's person and government, and settling the crown in the protestant line: and whereas the said pretended prince of Wales, hath assumed the stile and title of James the Third, king of England, Scotland, and Ireland, in open defiance of the provisions made for the establishment of the title and succession of the crown by the said acts of parliament, on which said acts the safety of your majesty's royal person and government, the continuance of the monarchy of Great Britain, the preservation of the protestant religion, the maintenance of the churches of England and Scotland, as by law established, the security of the ancient and undoubted rights and liberties, and the future peace and tranquillity of this kingdom do (under God) entirely depend: and whereas the said pretended prince of Wales, since the demise of the late queen, in prejudice of your majesty's just right and title to the imperial crown of these realms, has continued to assume the said name and title of James the third, king of England, Scotland, and Ireland, in manifest violation of your majesty's most lawful and rightful title to the crown, and of the acts and treaty above mentioned, made for settling, and further security of the same, and for extinguishing the hopes of him the said pretender, and of all other pretenders, and their open and secret abettors: and whereas also several wicked and evil-minded persons have, even since your majesty's happy accession to the throne, in riotous, fed-
tious,*

tious, and treasonable manner, taken upon them to give to the said pretended prince of *Wales* the aforesaid name and title: to the intent therefore the said acts may be for ever inviolably preserved, and that all future questions and divisions, by reason of any pretended titles to the crown, may be prevented, we your majesty's most dutiful and loyal subjects, the lords spiritual and temporal, and commons in this present parliament assembled, do humbly beseech your most excellent majesty, that it may be enacted: and be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by authority of the same,

All officers,
civil or mili-
tary, &c.

in Great Bri-
tain, &c.

all ecclesiasti-
cal persons,
&c.

all schoolma-
sters, &c.
all serjeants at
law, &c.

residing with-
in 30 miles of
London, shall
take the fol-
lowing oaths
in one of the
courts at
Westminster.

The time is
enlarged by

1 Geo. 2,

stat. 2, c. 23.

The oaths.

That all and every person and persons, as well peers as commoners, that shall bear any office or offices, civil or military, or shall receive any pay, salary, fee, or wages, by reason of any patent or grant from his majesty, or shall have command or place of trust from or under his majesty, or from any of his majesty's predecessors, or by his, her, or their authority, or by authority derived from him, her, or them, within *Great Britain*, or in his majesty's navy, or in the several islands of *Jersey* and *Guernsey*, or shall be of the household, or in the service or employment of his majesty, or of his royal highness *George* prince of *Wales*, or her royal highness the princess of *Wales*, or their issue, and all ecclesiastical persons, heads or governors, of what denomination soever, and all other members of colleges and halls in any university, that are or shall be of the foundation, or that do or shall enjoy any exhibition, (being of the age of eighteen years) and all persons teaching or reading to pupils in any university, or elsewhere, and all schoolmasters and ushers, and all preachers and teachers of separate congregations, all constables, and every person that shall act as a serjeant at law, counsellor at law, barrister, advocate, attorney, solicitor, writer in *Scotland*, proctor, clerk, or notary, by practising in any manner as such in any court whatsoever, who shall inhabit, reside, or be within the cities of *London* or *Westminster*, or within thirty miles distant from the same, on the first day of *Michaelmas* term next, at any time during the said term, shall personally appear before the end of the said term in his majesty's court of chancery, king's bench, common pleas, or exchequer, and there, in publick and open court, between the hours of nine of the clock, and twelve in the forenoon, take the oaths herein after mentioned; that is to say,

I *A. B.* do sincerely promise and swear, That I will be faithful, and bear true allegiance to his majesty king *George*:

So help me God.

I *A. B.* do swear, That I do from my heart abhor, detest, and abjure, as impious and heretical, that damnable doctrine and position, That princes excommunicated or deprived by the pope, or any authority of the see of *Rome*, may be deposed or murdered by their subjects, or any other whatsoever. And I do declare, That no foreign prince, person, prelate, state,

state, or potentate, hath, or ought to have any jurisdiction; power, superiority, pre-eminence, or authority, ecclesiastical or spiritual, within this realm :

So help me God.

I *A. B.* do truly and sincerely acknowledge, profess, testify, and declare in my conscience, before God and the world, That our sovereign lord king *George* is lawful and rightful king of this realm, and all other his majesty's dominions thereunto belonging. And I do solemnly and sincerely declare, That I do believe in my conscience, that the person pretended to be prince of *Wales*, during the life of the late king *James*, and since his decease, pretending to be, and taking upon himself the stile and title of king of *England*, by the name of *James* the third, or of *Scotland*, by the name of *James* the eighth, or the stile and title of king of *Great Britain*, hath not any right or title whatsoever to the crown of this realm, or any other the dominions thereto belonging : and I do renounce, refuse, and abjure any allegiance or obedience to him. And I do swear, That I will bear faith and true allegiance to his majesty king *George*, and him will defend, to the utmost of my power, against all traiterous conspiracies and attempts whatsoever, which shall be made against his person, crown, or dignity. And I will do my utmost endeavour to disclose and make known to his majesty, and his successors, all treasons and traiterous conspiracies which I shall know to be against him, or any of them: And I do faithfully promise, to the utmost of my power, to support, maintain, and defend the succession of the crown against him the said *James*, and all other persons whatsoever ; which succession, by an act, intituled, *An act for the further limitation of the crown, and better securing the rights and liberties of the subject*, is and stands limited to the princess *Sophia*, electress and dutchess dowager of *Hanover*, and the heirs of her body, being protestants. And all these things I do plainly and sincerely acknowledge and swear, according to these express words by me spoken, and according to the plain and common sense and understanding of the same words, without any equivocation, mental evasion, or secret reservation whatsoever. And I do make this recognition, acknowledgment, abjuration, renunciation, and promise, heartily, willingly and truly, upon the true faith of a Christian :

So help me God.

Unto which oaths so taken, every such person so taking the same, shall subscribe his name, or if he cannot write, shall make his mark ; and during the time of taking the said oaths, all pleas and proceedings in the said respective courts shall cease ; and all and every the said respective persons and officers, not having taken the said oaths, and subscribed the same, as aforesaid, shall, on or before the twenty-third day of *January* next, at the general or quarter sessions for that county, riding, liberty, city, borough, town corporate, or place, where he or they shall be, inhabit, or reside, on the first day of *December* next, take the said oaths in open court, be-

And subscribe the same.

Or in the quarter-sessions for the county, &c. where they twetween reside.

All persons who before the 10th of Aug. 1715, shall be admitted into any office, &c. shall within three months take the same oath at Westminster or sessions of the county where they reside.

Repeated by 2 Geo. 2, c. 31, sect. 3, and farther provisions relating hereto, sect. 4.

Persons in Scotland to take the said oath before Dec. 1, 1715, and subscribe the assurance following.

Ministers of the church of Scotland favoured in relation to this oath, by 5 Geo. 1, c. 29, &c. 6.

tween the said hours of nine and twelve of the clock in the forenoon, and subscribe his name, or if he cannot write, make his mark under the same.

Sect. 2. “ And be it further enacted by the authority aforesaid, That all and every person and persons that shall be admitted, entred, placed, or taken, into any office or offices, civil or military, or shall receive any pay, salary, fee or wages, by reason of any patent or grant from his majesty, or shall have command, or place of trust from or under his majesty, or by his authority, or by authority derived from him, within that part of *Great Britain* called *England*, or in his majesty’s navy, or in the several islands of *Jersey* and *Guernsey*, or that shall be admitted into any service or employment in his majesty’s household or family, or of his royal highness *George* prince of *Wales*, or of her royal highness the princess of *Wales*, or their issue, and all ecclesiastical persons, heads, or governors, of what denomination soever, and all other members of colleges and halls in any university, that are or shall be of the foundation, or that do or shall enjoy any exhibition, being of, or as soon as they shall attain the age of eighteen years, and all persons teaching or reading to pupils in any university, or elsewhere, and all schoolmasters and ushers, and all preachers and teachers of separate congregations, high or chief constables, and every person who shall act as serjeant at law, counsellor at law, barrister, advocate, attorney, solicitor, proctor, clerk, or notary, by practising in any manner as such in any court or courts whatsoever, within that part of *Great Britain* called *England*, who shall, at any time after the tenth day of *August*, one thousand seven hundred and fifteen, be admitted into, or enter upon any of the before mentioned preferments, benefices, offices, or places, or shall come into any such capacity, or shall take upon him or them any such practice, employment, or business, as aforesaid, shall, within three months after he or they shall be admitted into, or enter upon any such preferment, benefice, office, or place, or come into such capacity, or take upon him or them such practice, employment, or business, as aforesaid, take and subscribe the same oaths in one of the said courts at *Westminster*, or at the general quarter sessions of the county, city, or place, where he or they shall reside.

Sect. 3. “ And be it further enacted by the authority aforesaid, That all and every person and persons, as well peers as commoners, who by virtue of any act or acts made since the union of the two kingdoms, were bound to take and subscribe the oath of allegiance, subscribe the assurance, and to take and sign the oath of abjuration, for and on account of any office, civil, or military, or any other cause or occasion, within *Scotland*, shall on or before the first day of *December*, one thousand seven hundred and fifteen, take and subscribe the oath of abjuration above mentioned, and shall take and subscribe the said oath of allegiance, and subscribe the assurance in the words following, viz.

I *A. B.* do sincerely promise and swear, That I will be faithful, and bear true allegiance to his majesty king *George* :

1

So help me God.

I A.

I A. B. do, in the sincerity of my heart, assert, acknowledge, and declare, ^{The assur-}
That his majesty king *George* is the only lawful and undoubted sove-^{ance.}
reign of this realm, as well *de Jure*, that is, of right, king, as *de facto*,
that is, in the possession and exercise of the government; and therefore
I do sincerely and faithfully promise and engage, That I will, with heart
and hand, life and goods, maintain and defend his majesty's title and go-
vernment, against the person pretended to be prince of *Wales*, during the
life of the late king *James*, and since his decease, pretending to be, and
taking upon himself the stile and title of king of *England*, by the name of
James the Third, or of *Scotland*, by the name of *James* the Eighth, or the
stile and title of king of *Great Britain*, and his adherents, and all other
enemies, who, either by open or secret attempts, shall disturb or disquiet
his majesty in the possession and exercise thereof.

And that in such courts, and within such times limited, before such
judges, in such manner, and to be certified as in and by the several acts
generally above mentioned is directed.

Sec. 4. " And whereas certain doubts and scruples have arisen concern-
ing the sense and meaning of the clause following, contained in an act
made in the sixth year of her late majesty queen *Anne*, intituled, *An act* 6 Annæ, c. 23.
to make further provision for electing and summoning sixteen peers of Scotland,
to sit in the house of peers in the parliament of Great Britain; and for trying
peers for offences committed in Scotland; and for the farther regulating of voters
in elections of members to serve in parliament; whereby it is enacted, That
every person who shall refuse to take the oath last therein before recited,
or being a quaker, shall refuse to declare the effect thereof upon his solemn
affirmation, as directed by an act of parliament made in the seventh year 7 & 8 W. 3.
of the reign of his late majesty king *William*, intituled, *An act that the* c. 34.
solemn affirmation and declaration of the people called Quakers, shall be accepted
instead of an oath in the usual form, (which oath or declaration, the sheriff,
president of the meeting, or chief officer taking the poll at any election
of members to serve in the house of commons, for any place in *Great*
Britain, or commissioners for choosing burgesses for any place in *Scotland*,
at the request of any candidate, or other person present at such election,
are hereby impowered and required to administer) shall not be capable of
giving any vote for the election of any such member to serve in the house
of commons for any place in *Great Britain*, or commissioners to choose a
burgess for any place in *Scotland*: on account of which words, some have
pretended to vote in the meetings of free elections in *Scotland*, at the
choosing of the president and clerk of the meeting, without taking the
oath mentioned in the last recited act, whereby it has happened that rolls
of electors have been unduly made up, and wrong returns made: and
also, whereas divers of his majesty's good subjects, who have given con-
vincing marks of their loyalty to his royal person and government, have
scrupled to take the said oath, apprehending that the reference in the said
oath may be construed in some respect to be inconsistent with the estab-
lishment of the church in *Scotland* according to law, and to a clause con-

Persons in Scotland refusing to take the abjuration (or being quakers to make the affirmation) are incapacitated to vote at elections for members of parliament, &c.

cerning oaths to be imposed in *Scotland* after the union, contained in an act made in the parliament of *Scotland*, in the year one thousand seven hundred and seven, intituled, *An act for securing the protestant religion, and presbyterian church government*; which act is declared to be a fundamental and essential condition of the treaty of union: to the end therefore that the said scruples, and all mistakes and divisions on account of the same, may cease; be it further enacted and declared by the authority aforesaid, That every person who shall refuse to take the aforesaid oath of abjuration, or being a quaker, shall refuse to declare the effect thereof upon his solemn affirmation, in manner aforesaid (which oath and declaration the member last elected for any county or stewartry in *Scotland*, or in his absence the sheriff or steward's clerk, until a person be chosen to precede in the said meeting, according to the directions contained in the twenty-first act of the third parliament of king *Charles* the Second, held in *Scotland*, intituled, *An act concerning the election of commissioners for shires*, and after such choice the person so chosen to precede, or any person chosen to precede in any meeting of any county or stewartry there, in which rolls for elections shall happen to be made up, is hereby authorized and required to administer, at the request of any candidate or other person present at such meeting for election, before or after the choosing of the president of the meeting, or making up of the rolls) shall not be capable of giving any vote for the election of a president of the meeting, making up the rolls, or of any member to serve in the house of commons for any place in *Scotland*, or commissioner to choose a burgess for any place there, and further, that by no words in the said oath or oaths, formerly imposed, contained, it is or was meant to oblige his majesty's said subjects to any act or acts any ways inconsistent with the establishment of the church of *Scotland* according to law.

Heads, &c. of colleges, &c. in Scotland, to take the oaths.

Sec. 5. " And be it also further enacted by the authority aforesaid, That all heads, masters, and members of colleges, halls, or classes in the universities of Saint *Andrew*, *Glasgow*, *Aberdeen*, and *Edinburgh*, and also all probationers or licentiates of divinity, before they enter upon their trials, or obtain licences to preach, and all schoolmasters in *Scotland*, shall take and subscribe the aforesaid oaths, and subscribe the aforesaid assurance appointed to be taken for offices, civil and military, and other causes in *Scotland*, before such judges, and obtain such certificates, as in and by this act, or the acts whereunto relation is hereby had, directed.

Not to extend to persons beyond sea, who take the oaths in three months after they return. Penalty of refusing the oaths.

Sec. 6. " Provided that nothing in this act contained shall extend to any person now beyond the seas, who, by virtue of this act, ought to take the said oaths. so as such person do, within three months after his return to *Great Britain*, take the said oaths, and subscribe thereunto according to the appointment of this act.

Sec. 7. " And be it further enacted by the authority aforesaid, That all and every the person and persons aforesaid, that do or shall neglect or refuse to take the said oaths, and subscribe thereto as aforesaid, in the said courts and places, and at the respective times aforesaid, shall be *ipso facto* adjudged incapable, and disabled in law, to all intents and purposes

poses whatsoever, to have, occupy, or enjoy the said office or offices, employment or employments, or any part of them, or any matter or thing aforesaid, or any profit or advantage appertaining to them, or any of them; and every such office or place, employment or employments, shall be void, and is hereby adjudged void.

Sec. 8. “ And be it further enacted, That all and every such person and persons who shall neglect and refuse to take the said oaths, within the times, and at the places aforesaid, and yet after such neglect or refusal shall, by himself or themselves, his or their deputy or trustee, execute any of the said offices or employments after the said time is expired, wherein he or they ought to have taken the said oaths according to the true intent and meaning of this act, and being thereof lawfully convicted in or upon any information, presentment or indictment, in any of the king’s courts at *Westminster*, or at the assizes, upon prosecution before the court of justiciary, or circuits in *Scotland*, every such person or persons shall be disabled from thenceforth to sue or use any action, bill, plaint, or information in any court of law, or to prosecute any suit in any court of equity, or to be guardian of any child, or executor or administrator of any person, or capable of any legacy or deed of gift, or to be in any office within this realm of *Great Britain*, or to vote at any election for members to serve in parliaments, and shall forfeit the sum of five hundred pounds, to be recovered by him or them that shall sue for the same, to be prosecuted by any action of debt, suit, bill, plaint, or information, in any of his majesty’s courts at *Westminster*, wherein no essoin, protection, or wager of law shall lie, or any more than one imparlance, and by way of summar complaint before the court of sessions, or prosecution before the court of justiciary in *Scotland*.

Penalty of acting as officers, &c. not having taken the oaths.

Sec. 9. “ And be it further enacted, That it shall and may be lawful, to and for the respective courts aforesaid, to give and administer the oaths aforesaid, to the person and persons aforesaid, and upon due tender of any person or persons to take the said oaths, the said courts are hereby required and enjoined to administer the same; for the taking and subscribing the said oaths the proper officer shall have, take, and receive of every person, so taking and subscribing the said oaths, the sum of two shillings, and no more: of the taking and subscribing whereof a register shall be kept in a book to be provided for that purpose, by the proper officer, where the names of all such persons, who shall take and subscribe the said oaths, shall be fairly written, and when they took and subscribed the same; to which said register any person may resort, and inspect the same without fee or reward.

Person taking the oaths to pay 2s. and a register to be kept to enter their names.

Sec. 10. “ And be it further enacted, That it shall and may be lawful, to and for two or more justices of peace, or any other person or persons, who shall be by his majesty for that purpose specially appointed, by order in the privy council, or by commission under the great seal, to administer and tender the oaths, herein before appointed to be taken, to any person or persons whatsoever, whom they shall or may suspect to be dangerous or disaffected to his majesty, or his government: and if any person or per-

Two justices, &c. may tender the oaths to suspected persons.

sons, to whom the said oaths shall be so tendred, shall neglect or refuse to take the same, such justices, or any other person or persons specially and certify the refusal to the next sessions, to be appointed, as aforesaid, tendring the said oaths, shall certify the refusal thereof to the next quarter sessions of the county, riding, liberty, city, borough, town corporate, or place, in which such refusal shall be made; and the said refusal shall be recorded amongst the rolls of that sessions, and shall be from thence certified by the clerk of the peace of such county, riding, liberty, city, borough, town corporate, or place, into to be thence his majesty's court of chancery or king's bench, court of sessions, or certify'd in the court of justiciary in *Scotland*, there to be recorded amongst the rolls of the said courts, in a roll or rolls there to be provided and kept for that purpose only; and that every person so neglecting or refusing to take the said oaths, shall be, from the time of his neglect or refusal, taken, adjudged popish recusants, and adjudged a popish recusant convict, and as such to forfeit and be proceeded against.

SECT. 11. " And to the intent and purpose, that no person may avoid taking the several oaths in this act particularly mentioned, upon any pretence whatsoever: be it further enacted by the authority aforesaid; That it shall and may be lawful unto and for two or more justices of the peace, or any other such person or persons, who shall be by his majesty persons summoned by justices, and refusing to appear and take the oaths. Punishment of persons summoned by justices, and refusing to appear and take the oaths. for that purpose specially appointed, by order in the privy council; or by commission under the great seal, by writing under their hands and seals, to summon any person to appear before them at a certain day and time therein to be appointed, to take the said oaths; which said summons shall be served upon such person, or left at his dwelling-house, or usual place of abode, with one of the family there; and if such person, who shall be so summoned, neglects or refuses to appear according to such summons, That then, upon due proof to be made upon oath of the serving the said summons, which oath such justices, or any other person or persons specially to be appointed, as aforesaid, are hereby enabled to administer, such justices, or any other person or persons, specially to be appointed, as aforesaid, are hereby required to certify the same to the next general quarter-sessions of the peace to be holden for such county, riding, liberty, city, borough, town corporate, or place, there to be entred upon the rolls of the said sessions; and if such person who shall be so summoned to take the said oaths, as aforesaid, shall neglect or refuse to appear and take the said oaths at the said general quarter-sessions, the names of the persons so certified being publicly read at the first meeting of the said sessions, That then and in such case such person shall be taken, esteemed, and adjudged a popish recusant convict, and as such, to forfeit and be proceeded against as if such person had actually refused to take the said oaths; and the same shall be from thence certified by the clerk of the peace of such county, riding, liberty, city, borough, town corporate, or place, into his majesty's high court of chancery or king's bench, court of session, or court of justiciary in *Scotland*, there to be recorded among the rolls of the said courts, in a roll or rolls there to be provided and kept for that purpose only.

SECT.

Seet. 12. " And be it further enacted by the authority aforesaid, That if any head or member of any college within either of the universities of *Oxford* or *Cambridge*, that are or shall be of the foundation, or that do or shall enjoy any exhibition being of (or as soon as he shall attain) the age of eighteen years, shall neglect or refuse to take and subscribe, the several oaths; and the oaths in this act mentioned, according to the true intent and meaning of this act, or to produce a certificate thereof, under the hand of some proper officer of the respective court, and cause the same to be entred in the register of such college or hall within one month after his having taken and subscribed the said oaths; and if the persons in whom the right of election of such head or member shall be, do neglect or refuse to elect some other fitting or proper person, in the place or stead of such head or member so neglecting and refusing to take and subscribe the said oaths, as aforesaid, by the space of twelve months after such neglect or refusal, That then, and from thenceforth, it shall and may be lawful unto and for the king's most excellent majesty, his heirs and successors, under the great seal or sign manual, to nominate and appoint some fitting person, qualified according to the local statutes of such college or hall, to succeed to the place of such person who shall neglect or refuse to take and subscribe the said oaths; and that every person so to be nominated and appointed, shall have and enjoy such place, to which he shall be nominated and appointed, as aforesaid, to all intents and purposes whatsoever, and all benefits, privileges and advantages to the same belonging and appertaining, as if such person had been elected and chosen by the proper electors of such college or hall.

Seet. 13. " And be it further enacted by the authority aforesaid, That if the head of any college or hall in either of the universities, or other person or persons lawfully authorized to admit, shall refuse or neglect to admit such persons so nominated and appointed under the great seal or sign manual, as aforesaid, by the space of ten days after such admission shall be demanded of him or them, who ought to make such admission, to such place as he shall be nominated to, as aforesaid, That then and in such case the local visitor or visitors of such college or hall is hereby authorized and required to admit and place such person so nominated and appointed, to such place as he shall be nominated to, as aforesaid, within the space of one month after the same shall be demanded of such visitor; and in case such visitor shall neglect or refuse to admit, as aforesaid, during the space of one month after the same is lawfully demanded of such visitor, That then it shall and may be lawful to and for the court of king's bench at *Westminster*, to issue out a writ of *mandamus* to be directed to such visitor or visitors, to admit such person to such place, and to proceed upon the said writ, according to the course of the said court in such cases.

Seet. 14. " Provided always, That any person who, by any neglect or refusal according to this act, shall lose or forfeit any office, may be capable of a new grant of the said office, or of any other, and have and hold the same again, such person taking the said oaths in such manner as aforesaid,

Heads, &c. of colleges, &c. in Oxford and Cambridge, not taking the oaths; and the person in whom the right of election is not electing some proper person in his place, the king may nominate, &c.

The king's bench may issue a *mandamus* to compel the admission of a person so named.

Officer having forfeited may have his office again, on taking the oaths.

aforesaid, so as such office be not granted to, or actually enjoyed by some person at the time of regranting thereof.

This act shall not extend to persons beyond sea, who shall take the oaths in three months after their return.

After Sept. 29, 1715, no member of either house of parliament shall be capable of voting, &c. till he has taken the abjuration.

Sett. 15. " Provided also, That nothing herein contained shall be construed to extend to any person in his majesty's service on board the fleet, or to any person whatsoever who shall go beyond the seas before the first day of *November* next, so as such person take the said oaths, and subscribe thereunto, as aforesaid, according to the appointment of this act, within three months after his return.

Sett. 16. " And be it further enacted by the authority aforesaid, That from and after the twenty-ninth day of *September*, in the year of our Lord one thousand seven hundred and fifteen, no person that now is, or hereafter shall be a peer of this realm, or member of the house of peers, shall vote, or make his proxy in the house of peers, or sit there, during any debate in the said house of peers; nor any person that now is, or hereafter shall be a member in the house of commons, shall vote in the house of commons, or sit there during any debate in the said house of commons, after the speaker is chosen, until such peer or member shall, from time to time, respectively take the abjuration oath aforesaid, instead of the oath of abjuration which before by law ought to have been taken, in such manner, and together with such oaths, and declaration against transubstantiation, as the said former oath of abjuration ought to have been taken.

Punishment of members presuming to vote, &c.

Sett. 17. " And be it further enacted, That if any person that now is, or hereafter shall be a peer of this realm, or member of the house of peers, or member of the house of commons, in this or any succeeding parliament, and after the said twenty-ninth day of *September*, presume to vote, or make his proxy, not having taken the said oath, and subscribed the same, as aforesaid, every such peer or member so offending, shall be disabled to sue, or use any action, bill, plaint, or information in any court of law, or to prosecute any suit in any court of equity, or to be guardian of any child, or executor or administrator of any person, or be capable of any legacy or deed of gift, or to be in any office within this realm of *Great Britain*, or to vote at any election for members to serve in parliament, and shall forfeit the sum of five hundred pounds, to be recovered by him or them that shall sue for the same, to be prosecuted by action of debt, suit, bill, plaint, or information, in any of his majesty's courts at *Westminster*, wherein no essoin, protection, or wager of law shall lie, or any more than one imparlance, and by way of summary complaint before the court of sessions, or prosecution before the court of judicatory in *Scotland*.

This act not to extend to officers of inheritance, if a deputy be substituted who shall qualify himself, &c.
25 Car. 2, c. 2.

Sett. 18. " Provided, That neither this act, nor any thing therein contained, shall extend, be judged, or interpreted to take away or make void any office of inheritance, so as such person or persons having an office of inheritance, do or shall substitute and appoint his or their deputy or deputies, and such deputy or deputies shall qualify him or themselves, according to a proviso in the act made in the five and twentieth year of the reign of king *Charles* the Second, intituled, *An act for preventing dangers which*

which may happen from popish recusants, and so as such deputy or deputies do likewise take and subscribe the oaths in and by this present act required and expressed, and so as such deputy or deputies be, from time to time, approved of by the king's majesty under his privy signet.

Sett. 19. "Provided, That no office of inheritance in *Scotland* shall be forfeitable otherwise than according to the laws now in force there. Such offices in *Scotland* not forfeitable, but according to the laws there.

Sett. 20. "Provided always, That this act, or any thing therein contained, shall not extend to the office of any tithingman, headborough, overseer of the poor, church-wardens, surveyors of the highways, or any like inferior civil office, or to any office of forester, or keeper of any park, chase, warren, or game, or bailiff of any manor or lands, nor to any like private offices, nor to any person or persons having only any the before-mentioned, or the like offices, for or upon account of such offices only. This act not to extend to the office of any tythingman, &c.

Sett. 21. "Provided always, That this act, or any thing therein contained, shall not extend to any person who hath, since his majesty's happy accession to the throne, taken the oaths of allegiance and supremacy, and the abjuration oath, in any of the said courts of *Westminster*, or at the general quarter-sessions of the peace, or in either houses of parliament, unless by reason of such person's having some new office or employment, or his coming hereafter under some of the qualifications which require the taking the oaths before-mentioned, by virtue of this act, or any other law now in being. Nor to any who have taken the oaths since his majesty's accession, except on account of some new office.

Sett. 22. "Provided always, and be it declared and enacted, That all persons whatsoever, who, by virtue of any law now in being, are or would be obliged, if this act was not had or made, to receive the sacrament according to the usage of the church of *England*, and to make and subscribe the declaration against transubstantiation or either of them, on any occasion whatsoever, shall continue obliged, in all such cases to receive the said sacrament, and make and subscribe the said declaration, together with the oaths appointed by this act, in such manner, and under such penalties in case of neglect, as is required by any former law. Persons obliged by any law to receive the sacrament, &c. shall continue obliged.

Sett. 23. "Provided always, and be it enacted by the authority aforesaid, That all and every person or persons, who shall, on or before the first day of *December* next, take and subscribe the oaths in such manner as is appointed in this act, and also receive the sacrament of the Lord's supper according to the usage of the church of *England*, and make and subscribe the declaration against transubstantiation, in those cases where the sacrament ought to have been received, and the said declaration ought to have been made and subscribed, and has been neglected, shall be and are hereby indemnified from and against all penalties, forfeitures, incapacities, and disabilities incurred by any former neglect or omission of taking or subscribing the oaths, or receiving the sacrament, or subscribing the aforesaid declaration, according to any former act or acts concerning persons in offices or places of trust, and is, and shall be fully and actually recapacitated. Persons taking the oaths, &c. before Dec. 1, indemnify'd from all penalties, &c.

recapacitated and restored to the same state and condition as before such neglect or omission.

Likewise all who have taken the oaths since his majesty's accession.

Señ. 24. "Provided also, That all and every person who has, at any time since his majesty's happy accession to the crown, taken the oaths, and taken and subscribed the abjuration, and also subscribed the declaration, and received the sacrament, in such cases where the sacrament ought to have been received, and the said declaration ought to have been subscribed, according to any act or acts concerning persons in offices or places of trust, shall likewise be, and are hereby indemnified, as aforesaid, though the same has not been within the time appointed by law.

No person who has forfeited any office, &c. shall be restored if another be promoted.

Señ. 23. "Provided always, That no person or persons, who by the reason of any such neglect or omission, hath or have left or forfeited any office, benefice, place, dignity, or employment whatsoever, to which any other person or persons hath or have been preferred or promoted, shall be restored to such office, benefice, place, dignity, or employment; any thing herein contained to the contrary notwithstanding.

Popish recusants convicted by this act, shall be discharged on taking the oaths.

Señ. 26. "Provided always, That any person or persons who shall become popish recusants convicted, by virtue of any thing in this act contained, and shall at any time thereafter take and subscribe the oaths, and make and subscribe the declaration, and subscribe the assurance, in such manner, and in such place, as is appointed by this act, shall be and are hereby, from such time, discharged from such conviction.

This abjuration to be taken in lieu of the former. Reward for taking the pretender, 1 Geo. 1, Stat. 1, c. 1.

Señ. 27. "Provided always, That the oath of abjuration, and the assurance in this act contained, shall in all cases be taken to be in lieu of the oath of abjuration, and the assurance formerly appointed.

Señ. 28. "And whereas in and by an act of parliament made in the last sessions of parliament, and in the first year of his majesty's reign, intituled, *An act for the better support of his majesty's household, and the honour and dignity of the crown of Great Britain*, it is enacted, That the lord high treasurer of *Great Britain*, or commissioners of the treasury for the time being, should, and are thereby authorized and required, out of any monies granted or to be granted by parliament, for the use of the public, forthwith to issue and pay the sum of one hundred thousand pounds, to any person or persons, who should seize and secure the person of the pretender, whenever he should land, or attempt to land in any of his majesty's dominions; to the end that the encouragement and reward for a service so important, may be rendered sure and effectual; be it enacted by the authority aforesaid, That the lord high treasurer of *Great Britain*, or the commissioners of the treasury for the time being, shall and are hereby authorized and required, out of any monies granted or to be granted by parliament, to the use of the public, forthwith to issue the sum of one hundred thousand pounds to any person or persons, being natives or foreigners, who shall seize or secure, alive or dead, the person of the pretender, whenever he shall land, or attempt to land in *Great Britain* or *Ireland*, or any other his majesty's dominions; and if any of the persons who have adhered to, or assisted, or who shall adhere to, or assist the said pretender, shall seize and secure him, as aforesaid, he or they who shall

to seize and secure him, shall have his majesty's gracious general pardon, and shall also receive the said reward; to be paid in manner aforesaid.

Sett. 29. " And be it further enacted, That in case any person or persons, natives or foreigners, shall happen to be killed in seizing or securing, alive or dead, the person of the said pretender, as aforesaid, that then their executors or administrators, or such person or persons, to whom the right of administration of the personal estate of each person so killed shall belong, shall have and receive respectively, the same share and proportion of the said one hundred thousand pounds, as their several and respective testators or intestates would have been entitled unto, had they been living.

To go to the executors, &c. of persons killed in taking him.

Sett. 30. " And be it further enacted, That it shall and may be lawful for his majesty to grant a commission or commissions, under the great seal of *Great Britain*, to such person or persons as to him shall seem meet, to empower him or them to administer the oaths of allegiance and supremacy, and of abjuration, in this act mentioned, to all and every officer and officers in his majesty's service, either by sea or land, and all and every seaman and seamen, and private soldiers: and such sea and land-officers, and seamen and soldiers, are hereby enjoined and required to take the same, upon the pains and penalties in this act mentioned in case of refusal thereof; and that upon taking the said oaths, such officer and officers, seamen and soldiers, do subscribe the same upon a roll to be kept by the person or persons who shall administer the same; which roll such person as hath or shall have the keeping thereof, shall on or before the twelfth day of *February*, one thousand seven hundred and fifteen, deliver into the office of the petty bag in the court of chancery, there to be kept upon record.

The king may, by commission empower persons to administer the oaths to officers, seamen, &c. whose names shall be registered and returned into the petty-bag office before Feb. 1, 1715.

Sett. 31. " Provided always, That no seaman or soldier, under the degree of a commission or warrant officer, shall be obliged to pay any fee or reward on taking the said oaths.

No seaman, &c. to pay any fee.

Sett. 32. " Provided always, That nothing in this act contained shall extend to the office of the lord great chamberlain of *England*, so as the lord great chamberlain for the time being do or shall substitute and appoint his sufficient deputy, who shall have taken the oaths aforesaid; any thing in this act to the contrary notwithstanding.

Not to extend to the office of lord great chamberlain.

Sett. 33. " And be it further enacted by the authority aforesaid, That from and after the nine and twentieth day of *September*, one thousand seven hundred and fifteen, the same oath of abjuration by this act appointed to be taken in *Great Britain*, shall be the oath of abjuration to be taken in the kingdom of *Ireland*, and no other: and that the indemnities above mentioned be and are hereby extended to the said kingdom of *Ireland*.

The same abjuration to be taken in Ireland after Sept. 29, 1715.

STAT. 8 Geo. 1, c. 6. [*A. D.* 1721, intituled] " An act for granting the people called *quakers*, such forms of affirmation or declaration, as may remove the difficulties which many of them lie under."

Sett. 1. " Whereas, for giving some ease to scrupulous consciences, an act was made in the first year of the reign of their late majesties king *Wil-*

1 W. & M. 1. *William and queen Mary, [intituled, An act for exempting their majesties protestant*
 sess. 1, c. 18. *subjects, dissenting from the church of England, from the penalties of certain*
laws,] whereby (among other things) a declaration of fidelity, in the form
 therein expressed, is appointed to be made and subscribed by certain per-
 sons, dissenters from the church of *England*, who scruple the taking of any
 oath: and whereas an act was made in the seventh and eighth years of the
 7 & 8 W. 3. reign of his late majesty king *William* the third, [intituled, *An act that the*
 c. 34. *solemn affirmation and declaration of the people called quakers, shall be accepted*
instead of an oath in the usual form,] under the provisos therein mentioned;
 which act being at first temporary, was afterwards farther continued by an
 13 & 14 W. 3. act made in the thirteenth and fourteenth years of the reign of his said late
 c. 4. majesty; and the same act is made perpetual by an act made in the first
 year of his present majesty's reign; by which last mentioned act a form,
 importing the effect of the abjuration oath, is prescribed to be taken by
 the said people called *quakers*: and whereas the inconveniencies to the said
 people called *quakers*, and their families, and to others requiring their
 testimony, in many cases are not sufficiently avoided, by reason of difficul-
 ties among the said *quakers*, relating to the forms of the declaration, affir-
 mation, and abjuration before mentioned, as the same are now prescribed;
 and whereas it is evident, that the said people called *quakers*, have not
 abused the liberty and indulgence allowed to them by law; and they have
 given testimony of their fidelity and affection to his majesty, and the settle-
 ment of the crown in the protestant line; and it is reasonable to give them
 farther ease and relief: may it therefore please your most excellent majesty,
 that it may be enacted, and be it enacted by the king's most excellent ma-
 jesty, by and with the advice and consent of the lords spiritual and tempo-
 ral, and commons, in this present parliament assembled, and by the au-
 thority of the same, That in all cases, where, by law, any *quaker* is or shall
 be required or permitted to make and subscribe the declaration of fidelity
 in the form prescribed by the said first mentioned act, or to make the solemn
 affirmation or declaration in the form prescribed by the said act of the
 seventh and eighth years of the reign of his late majesty king *William*
 the third, or to take the effect of the abjuration oath in the form pre-
 scribed by the said act of the first year of his present majesty's reign, every
 such *quaker* shall, instead of such first mentioned declaration of fidelity,
 make and subscribe a declaration of fidelity in the following words, *viz.*
 Where any
quaker is per-
 mitted to
 make the de-
 claration of
 fidelity re-
 quired by 1
 W. & M. sess.
 1, c. 18, or
 the affirma-
 tion pre-
 scribed by 7
 & 8 W. 3, c. 34, or to make the effect of the abjuration enjoined by 1 Geo. 1, stat. 2, c. 6, he shall make
 the following declaration of fidelity.

The declara-
 tion.

I *A. B.* do solemnly and sincerely promise and declare, That I will be
 true and faithful to king *George*; and do solemnly, sincerely, and truly
 profess, testify, and declare, that I do from my heart abhor, detest; and
 renounce, as impious and heretical, that wicked doctrine and position;
 That princes excommunicated or deprived by the pope, or any authority
 of the see of *Rome*, may be deposed or murdered by their subjects, or any
 other whatsoever. And I do declare, that no foreign prince, person; pre-
 late, state, or potentate, hath, or ought to have, any power, jurisdiction,
 superiority

superiority, preheminance, or authority, ecclesiastical or spiritual, within this realm.

And instead of the solemn affirmation or declaration, in the form prescribed by the said act of the seventh and eighth years of the reign of his said late majesty king *William* the third, every such quaker shall make the solemn declaration or affirmation following, *viz.*

And instead of the affirmation in 7 & 8 W. 3, shall make the following affirmation.

I *A. B.* do solemnly, sincerely, and truly declare and affirm.

The affirmation.

And instead of the form prescribed by the said act of the first year of his present majesty's reign, for the effect of the abjuration oath, every such quaker shall take the effect thereof in the following words, *viz.*

And instead of the form of the abjuration by 1 Geo.

1, stat. 2, c. 6, shall take the effect thereof, as follows.

I *A. B.* do solemnly, sincerely, and truly acknowledge, profess, testify, and declare, That king *George* is lawful and rightful king of this realm, and all other his dominions and countries thereunto belonging. And I do solemnly and sincerely declare, That I do believe the person pretended to be prince of *Wales*, during the life of the late king *James*, and since his decease, pretending to be, and taking upon himself the stile and title of king of *England*, by the name of *James* the third, or of *Scotland*, by the name of *James* the eighth, or the stile and title of king of *Great Britain*, hath not any right or title whatsoever to the crown of this realm, nor any other the dominions thereunto belonging: and I do renounce and refuse any allegiance or obedience to him. And I do solemnly promise, That I will be true and faithful, and bear true allegiance to king *George*, and to him will be faithful against all traiterous conspiracies and attempts whatsoever, which shall be made against his person, crown, or dignity. And I will do my best endeavour to disclose and make known to king *George*, and his successors, all treasons and traiterous conspiracies which I shall know to be against him, or any of them: And I will be true and faithful to the succession of the crown against him the said *James*, and all other persons whatsoever, as the same is and stands settled by an act, intituled, *An act declaring the rights and liberties of the subject, and settling the succession of the crown*, to the late queen *Anne*, and the heirs of her body, being protestants; and as the same, by one other act, intituled, *An act for the further limitation of the crown, and better securing the rights and liberties of the subject*, is and stands settled and intailed, after the decease of the said late queen, and for default of issue of the said late queen, to the late princess *Sophia*, electress and dutchess dowager of *Hanover*, and the heirs of her body, being protestants. And all these things I do plainly and sincerely acknowledge, promise, and declare, according to these express words by me spoken, and according to the plain and common sense and understanding of the same words, without any equivocation, mental evasion,

Effect of the abjuration oath.

1 W. & M. sess. 2, c. 2.

12 & 13 W. 3, c. 2.

sion, or secret reservation whatsoever. And I do make this recognition, acknowledgment, renunciation, and promise, heartily, willingly and truly.

The persons required to administer the former declaration, shall administer the same in the words appointed by this act.

And all persons, authorized or required to administer or tender, either the said former declaration of fidelity, or the said former solemn affirmation or declaration, or the former effect of the abjuration oath aforesaid, shall be, and are hereby authorized and required to administer and tender the same respectively to the said people called *quakers*, in the words by this act respectively appointed.

The declaration, &c. appointed hereby, to be of the same force, as if taken in the forms prescribed by the former acts.

Persons convicted of false affirming, &c. liable to the pains of wilful perjury.
7 & 8 W. 3.
c. 34.

Secl. 2. "And be it further enacted by the authority aforesaid, That the declaration of fidelity, and solemn affirmation or declaration, and the effect of the abjuration oath, appointed by this act for the said people called *quakers*, instead of the respective forms prescribed for the same by the said recited acts, shall respectively be adjudged and taken to be of such and the same force and effect, and no other, to all intents and purposes, in all courts of justice and elsewhere, as if such quaker had made and subscribed the declaration of fidelity, or had made the solemn affirmation or declaration, or had taken the effect of the abjuration-oath, in the respective forms appointed by the said recited acts: and if any person making such affirmation or declaration, as is appointed by this act to be made, instead of the affirmation or declaration in the form prescribed by the before-mentioned act of the seventh and eighth years of the reign of his said late majesty king *William* the third, shall be lawfully convicted of wilful, false, and corrupt affirming or declaring any matter or thing, which, if sworn in the common or usual form, would have amounted to wilful and corrupt perjury, every such person, so offending, shall incur and suffer such and the same pains, penalties, and forfeitures, as are inflicted or enacted, by the laws and statutes of this realm, against persons convicted of wilful and corrupt perjury.

All clauses, &c. in the recited acts, not hereby altered, to remain in force.

Secl. 3. "Provided always, That all clauses, provisoes, and exceptions, contained in the said recited acts, or any of them, not hereby expressly altered or repealed, shall be of such and the same force and effect, as they were before the making of this act.

STAT. 10 Geo. 1, c. 4. [*A. D.* 1723.] made, among other purposes, "for explaining and amending *stat. 9 Geo. 1, c. 24*, to oblige all persons, being papists, refusing to take the oaths, to register their names and real estates."

Secl. 12. "And whereas by an act made in the eighth year of his majesty's reign, [intituled, *An act for granting the people called quakers, such forms of affirmation or declaration as may remove the difficulties which many of them lie under,*] it is enacted, That in all cases where, by law, any quaker was or should be required or permitted to make and subscribe the declaration of fidelity, or to make the solemn affirmation or declaration, or to take

take the effect of the abjuration oath, as before appointed, every such quaker should, instead thereof, make and subscribe the declaration of fidelity, and make the solemn declaration or affirmation, and take the effect of the abjuration-oath, in the forms prescribed by the said act: and whereas many of the said people called *quakers*, to testify their constant loyalty and affection to his majesty, and the succession of the crown in the protestant line, have (pursuant to the liberty granted to them by the said act) taken and subscribed the respective forms of affirmation, declaration, and effect of the abjuration-oath, thereby appointed for them, instead of the oaths required of other persons by the said recited act of the last session of parliament; be it therefore declared and enacted, That all and every person and persons, being of the people called *quakers*, who hath or have at any time heretofore, in any of the courts or places aforesaid, made and subscribed, or who shall, in any of the said courts or places, within the respective times by this act before limited and appointed, make and subscribe the declaration of fidelity, and take the effect of the abjuration-oath, appointed by the said recited act of the eighth year of his majesty's reign; all and every such quaker and quakers, so having taken and subscribed, or who shall, as aforesaid, take and subscribe such declaration of fidelity, and effect of the abjuration oath, hath and have complied, and shall be deemed and taken to have complied with the true intent and meaning of the said recited act of the last session of parliament, and of this act, and shall be absolutely freed and discharged from all penalties and forfeitures for not taking the said oaths, or not registering his or their estate or estates.

SECT. 18. "And whereas the following words are contained in the latter part of the oath of abjuration, *viz. (upon the true faith of a Christian,)* be it further enacted by the authority aforesaid, That whenever any of his majesty's subjects, professing the *Jewish* religion, shall present himself to take the said oath of abjuration, in pursuance of the above recited act, or of this present act, the said words (*upon the true faith of a Christian*) shall be omitted out of the said oath, in administering the same to such person, and the taking the said oath by such person professing the *Jewish* religion, without the words aforesaid, in like manner as *Jews* are admitted to be sworn to give evidence in courts of justice, shall be deemed to be a sufficient taking of the abjuration oath within the meaning of this and the said recited act.

STAT. 22 Geo. 2, c. 46. [A. D. 1749,] made, among other purposes, "for allowing quakers to make affirmation in cases where an oath is or shall be required."

SECT. 36. "And whereas a doubt hath arisen, whether the solemn affirmation or declaration of the people called *quakers*, prescribed by an act made in the eighth year of the reign of his late majesty king George the first; (intituled, *An act for granting the people called quakers, such forms of affirmation or declaration as may remove the difficulties which many of them lie under*)

Quakers, &c.

How Jews are
to take the
abjuration-
oath.
3 Geo. 1, c. 13.

8 Geo. 1, c. 6.

Affirmation of
quakers al-
lowed in all
cases in lieu
of an oath re-
quired by act
of parliament.

Penalty on
false affirm-
ing.

Not to extend
to criminal
cases, &c.

under) can be allowed and taken instead of an oath, in any case wherein by any act or acts of parliament an oath is required, unless the said affirmation or declaration be by such act or acts of parliament particularly and expressly directed to be allowed and taken instead of such oath; by reason of which doubt the testimony of the said people called *quakers*, is frequently refused, whereby the said people, and others requiring their evidence, are subjected to great inconveniencies: therefore for removing the said doubt, be it enacted and declared by the authority aforesaid, That in all cases wherein by any act or acts of parliament now in force, or hereafter to be made, an oath is or shall be allowed, authorized, directed, or required, the solemn affirmation or declaration of any of the people called *quakers*, in the form prescribed by the said act made in the eighth year of his said late majesty's reign, shall be allowed and taken instead of such oath, although no particular or express provision be made for that purpose in such act or acts; and all persons who are or shall be authorized or required to administer such oath, shall be, and are hereby authorized and required to administer the said affirmation or declaration; and the said solemn affirmation or declaration, so made as aforesaid, shall be adjudged and taken, and is hereby enacted and declared to be of the same force and effect, to all intents and purposes, in all courts of justice, and other places, where by law an oath is or shall be allowed, authorized, directed, or required, as if such quaker had taken an oath in the usual form; and if any person making such affirmation or declaration, shall be lawfully convicted of having wilfully, falsely, and corruptly affirmed or declared any matter or thing, which, if the same had been deposed in the usual form, would have amounted to wilful and corrupt perjury, every person so offending, shall incur and suffer the like pains, penalties, and forfeitures, as by the laws and statutes of this realm are to be inflicted on persons convicted of wilful and corrupt perjury.

See 37. "Provided nevertheless, and be it enacted, That no quaker shall, by virtue of this act, be qualified or permitted to give evidence in any criminal cases, or to serve on juries, or to bear any office or place of profit in the government; any thing herein contained to the contrary notwithstanding.

Office.

OFFICE (*officium*,) signifies that function by virtue whereof a man hath some employment in the affairs of another, as of the king or of another person. *Cowell*.

It

It is said, that the word *officium* principally implies a duty, and in the next place the charge of such duty; and that it is a rule, that where one man hath to do with another's affairs against his will, and without his leave, that this is an office, and he who is in it is an officer. *Carth.* 478.

There is a difference between an office and an employment, every office being an employment; but there are employments which do not come under the denomination of offices; such as an agreement to make hay, plough land, herd a flock, &c. which differ widely from that of steward of a manor, &c. 2 *Sid.* 142.

By the ancient common law, officers ought to be honest men, legal and sage, *Et qui melius sciunt Et possint officio illi intendere*; and this, says my lord *Coke*, was the policy of prudent antiquity, that officers did ever give grace to the place, and not the place only to grace the officer. 2 *Inst.* 32, 456.

Officers are distinguished into civil and military; according to the nature of their several trusts. *Carth.* 479.

Offices are distinguished into those which are of a public, and those which are of a private nature; and herein it is said, that every man is a public officer, who hath any duty concerning the public; and he is not the less a public officer, where his authority is confined to narrow limits; because it is the duty of his office, and the nature of that duty, which makes him a public officer, and not the extent of his authority. *Carth.* 479.

It hath been held, that the commissioners for purging corporations could not take notice of or remove an attorney of a court, it not being a public office in which the government was concerned. 1 *Sid.* 94, 152; 1 *Lev.* 75; 1 *Keb.* 349; *Raym.* 94; *Hurst's case*.

It hath been doubted, whether the censor of the college of physicians, be such an officer as is compellable to take the oaths prescribed by the statute 25 *Car.* 2, it being urged, that the oversight and inspection of medicines was of a private nature; and that no offices were within the intent of that statute, but such as related to the revenue, or to the conservation of the peace; and that particular powers created for particular purposes were not within that statute. 5 *Mod.* 431; *Carth.* 478; *The king v. Dr. Burnell*.

Also offices are distinguished into ancient offices, and those which are of a new creation; and herein it is observable, that constant usage hath not only sanctified the first establishment of such ancient offices as have existed time out of mind, but also hath prescribed and settled the manner in which they have and are to continue to exist, in what manner to be exercised, how to be disposed, &c. 9 *Co.* 97; *Cro. Eliz.* 636; 2 *Roll. Abr.* 182; *Cro. Car.* 513; 1 *Show.* 436.

There is also another distinction of offices into such as are judicial, and such as are ministerial offices only; the first relating to the administration of justice, or the actual exercise thereof, must be executed by persons of sufficient capacity, and by the persons themselves to whom they are granted; and herein also ancient usage and custom must govern. 1 *Fon.* 109; *Dav.* 35; 9 *Co.* 97.

Who

Who hath a right to create and grant or assign an office; and of one office being incident to another.

The king is the universal officer and disposer of justice within this realm, from whom all others are said to be derived; but yet he cannot create a new office inconsistent with our constitution, or prejudicial to the subject. 12 Co. 116. 1 Roll. Rep. 206. Carth. 478.

There are three things, says my lord *Coke*, which have fair pretences, yet are mischievous; 1st, new courts; 2d, new offices; 3d, new corporations for trade; and as to new offices, either in courts or out of them, these, he says, cannot be created without act of parliament; for that under the pretence of common good, they are exercised to the intolerable grievance of the subject. 2 Inst. 540.

An office granted by letters patent for the sole making of all bills, informations and letters missive in the council of *York*, was held unreasonable and void. 1 Jen. 231. *Mounson v. Lyfter*.

One *Chute* petitioned the king to erect a new office for registering all strangers within the realm, except merchant strangers, and to grant the said office to the petitioner with or without a fee; and it was resolved by all the judges at *Serjeants Inn*, that the erection of such new offices for the benefit of a private person, was against all law of what nature soever. 1 Co. 116, and several cases there cited to this purpose.

King *Ed. 4.*, by his letters patent bearing date 10th of *October*, anno 15, of his reign, reciting, That where there was no office of the chancellor of the garter, and that there should be such an office of the chancellor of the garter, and that none should have it but the bishop of *Salisbury* for the time being, we will and ordain, That *Richard Beauchamp*, now bishop of *Salisbury*, should have it for his life, and after his decease, that his successors should have it for ever; and amongst divers others points it was resolved unanimously, that this grant was void; for that a new office was erected, and it was not defined what jurisdiction or authority the officer should have, and therefore for the uncertainty it was void. 4 Inst. 200. *Pasch. 6 Jac. 1.* *Bishop of Salisbury's case*. *Moor* 808. S. C.

The king cannot grant to any person to hold a court of equity, though he may grant *tenere placita*; for the dispensation of equity is a special trust committed to the king, and not by him to be intrusted with any other, except his chancellor. *Heb. 63.*

Where-ever one office is incident to another, such incident office is regularly grantable by him who hath the principal office; and on this foundation it hath been held, that the king's grant of the office of county clerk was void, it being inseparably incident to the office of sheriff, and could not by any law of contrivance be taken away from him. 4 Co. 32. *Mitton's case*.

So the office of chamberlain of the king's bench prison is inseparably incident to the office of marshal, and therefore a grant of the office of
I marshal,

marshal, with a reservation of the office of chamberlain is void. 1 *Salk.* 439. *Per Holt* Ch. J. 1 *Leon.* 320, 321. Like point.

So it hath been resolved, that the office of exigenter of *London*, and other counties in *England*, is incident to the office of chief justice of *C. B.* and that therefore a grant thereof by the king, tho' in the vacancy of a chief justice, is null and void. *Dyer* 175. a. pl. 25. 1 *And.* 152. and see *Show. Par. Ca. Sir Rowland Holt's case.*

My lord *Coke* says, that the justices of courts did ever appoint their clerks, some of which after by prescription grew to be officers in their courts; and this right which they had of constituting their own officers, is further confirmed to them by *Westm.* 2. cap. 30; the reasons whereof are two fold; 1st, For that the law doth ever appoint those that have the greatest knowledge and skill, to perform that which is to be done. 2dly, The officers and clerks are but to enter, inrol, or effect that which the justices do adjudge, award or order, the insufficient doing whereof maketh the proceeding of the justices erroneous, than the which nothing can be more dishonourable and grievous to the justices, and prejudicial to the party. 2 *Inst.* 425. 4 *Mod.* 173. cited.

See STAT. 5 & 6, Ed. 6, c. 16, against buying and selling offices, under **Bribery.**

STAT. 13 Car. 2, c. 1. [*A. D.* 1661, intituled] "An act for the well-governing and regulating of corporations."

"Whereas questions are likely to arise concerning the validity of elections of magistrates, and other officers and members in corporations, as well in respect of removing some, as placing others, during the late troubles, contrary to the intent and true meaning of their charters and liberties; (2) And to the end that the succession in such corporations may be most probably perpetuated in the hands of persons well-affected to his majesty, and the established government, it being too well known, that, notwithstanding all his majesty's endeavours, and unparalleled indulgence in pardoning all that is past, nevertheless many evil spirits are still working:

Sett. 2. "Wherefore, for prevention of the like mischief for the time to come, and for preservation of the public peace both in church and state, be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons assembled in parliament, and by the authority of the same, That commissions shall before the twentieth day of *February* next, be issued forth under the great seal of *England*, unto such persons as his majesty shall appoint for the executing of the powers and authorities herein after expressed: and that all and every the persons to be named commissioners in the said commissions respectively, shall by virtue of this act be commissioners respectively, for and within the several cities, corporations and boroughs, and cinque-ports, and their members, and other port-towns within the king-

Commissions
to issue for
England,
Wales, and
Berwick.

dom of *England*, dominion of *Wales*, and town of *Berwick upon Tweed*, for which they shall be respectively nominated and appointed.

Corporation
charters sav-
ed.

Seet. 3. " And be it further enacted by the authority aforesaid, That no charter of any corporation, cities, towns, boroughs, cinque-ports, and their members, and other port-towns in *England* and *Wales*, or town of *Berwick upon Tweed*, shall at any time hereafter be avoided, for or by reason of any act or thing done, or omitted to be done, before the first day of this present parliament.

Magistrates to
take and sub-
scribe to cer-
tain oaths.

Seet. 4. " And be it further enacted by the authority aforesaid, That all persons who upon the four and twentieth day of *December*, one thousand six hundred sixty and one, shall be mayors, aldermen, recorders, bailiffs, town-clerks, common council-men, and other persons then bearing any office or offices of magistracy, or places, or trusts, or other imployment relating to, or concerning the government of the said respective cities, corporations and boroughs, and cinque-ports, and their members, and other port-towns, shall at any time before the five and twentieth day of *March*, one thousand six hundred sixty and three, when they shall be thereunto required by the said respective commissioners, or any three or more of them, take the oaths of allegiance and supremacy, and this oath following :

Oaths of alle-
giance and
supremacy.

The oath to
be taken.

Seet. 5. " **I** *A. B.* do declare and believe, That it is not lawful, upon any pretence whatsoever, to take arms against the king; and that I do abhor the traiterous position of taking arms by his authority against his person, or against those that are commissioned by him: so help me God.

Repealed by
5 Geo. 1, c. 6,
f. 2.

Seet. 6. " And also at the same time shall publicly subscribe before the said commissioners, or any three of them, this following declaration :

The declara-
tion to be sub-
scribed.

I *A. B.* do declare, That I hold that there lies no obligation upon me, or any other person, from the oath commonly called, *The Solemn League and Covenant* : and that the same was in itself an unlawful oath, and imposed upon the subjects of this realm against the known laws and liberties of the kingdom.

Those who re-
fuse the oaths,
removed.

Seet. 7. " And that all such of the said mayors, and other the persons aforesaid, by whom the said oaths are to be taken, and declaration subscribed, as aforesaid, who shall refuse to take and subscribe the same within the time, and in manner aforesaid, shall, from and immediately after such refusal, be by authority of this act (*ipso facto*) removed and displaced of and from the said offices and places respectively; (2) and the said offices and places, from and immediately after such refusal, shall be, and are hereby declared and adjudged to be void to all intents and purposes, as if the said respective persons so refusing were naturally dead.

Commission-
ers have pow-
er to remove

Seet. 8. " And nevertheless, be it further enacted by the authority aforesaid, That the said commissioners, or any five or more of them, shall have

have full power by virtue of this act, by order and warrant under their hands and seals, to displace or remove any of the persons aforesaid from the said respective offices and places, or trusts aforesaid, if the said commissioners, or the major part of them then present, shall deem it expedient for the public safety, although such persons shall have taken and subscribed, or be willing to take and subscribe the said oaths and declaration.

Secl. 9. " And be it also enacted, That the said respective commissioners, or any five or more of them, as aforesaid, shall have power to restore such person or persons as have been illegally or unduly removed, into the places out of which he or they removed; and also to put and place into the offices and places which by any of the ways aforesaid shall be void respectively, some other person or persons then being, or which have been members or inhabitants of the said respective cities, corporations and boroughs, and cinque-ports, and their members, and other port-towns; (2) who shall before the said respective commissioners, or any three or more of them, take the said oaths of obedience and supremacy, and the said other oath, and subscribe the declaration herein before particularly mentioned, and that the said persons from and after the taking of the said oaths, and subscribing the said declaration, shall hold and enjoy, and be vested in the said places and offices, as if they had been duly elected and chosen according to the charters and former usages of the said respective cities, corporations and boroughs, cinque-ports, and their members, and other port-towns.

Secl. 10. " And be it further enacted by the authority aforesaid, That the said respective commissioners, or any three or more of them respectively, shall have power, during the continuance of their respective commissions, to administer the oaths aforesaid, and tender the said declaration to the said persons hereby required to take and subscribe the same: (2) and from and after the expiration of the said respective commissions, the said three oaths and declaration shall be from time to time administered and tendred to such person and persons who by the true meaning of this act, or any clause therein contained, are to take the same, by such person or persons respectively, who by the charters or usages of the said respective cities, corporations and boroughs, and cinque-ports, and their members, and other port-towns, ought to administer the oath for due executing the said places or offices respectively; (3) and in default of such, by two justices of the peace of the said cities, corporations and boroughs, and cinque-ports, and their members, and other port-towns, for the time being, if any such there be, or otherwise by two justices of the peace for the time being, of the respective counties where the said cities, corporations or boroughs, or cinque-ports, or their members, or other port-towns are.

Secl. 11. " And be it likewise enacted by the authority aforesaid, That the said commissioners, justices of the peace, and other persons hereby authorized to administer the said oaths, and tender the said declaration respectively, shall cause memorandums or entries to be made of all oaths taken before them, and subscriptions made, as aforesaid, and deliver the same once in a year

any at their wills, though they offer to take their oaths.

Their power to restore any magistrate unduly removed.

Commissioners empowered to give the oaths. Who shall give the oath after the commissions are determined.

The commissioners to keep remembrances, and give them to the town-clerks, &c.

to the respective town-clerks, or other register or clerk of the said respective cities, corporations and boroughs, and cinque-ports, and their members, and other port-towns, who shall cause the same to be fairly entered into the books or registers belonging to the said respective cities, corporations or boroughs, or cinque-ports, and their members, or other port-towns.

None to be a
magistrate,
unless he take
the oaths and
receive the sa-
crament.

Farther provi-
sions relating
hereto, 5 Geo.

1, c. 6, f. 3,

Carthew 306.

3 Lev. 116.

2 Ven. 247,

248.

The usual
oath.

Sett. 12. " Provided also, and be it enacted by the authority aforesaid, That from and after the expiration of the said commissions, no person or persons shall for ever hereafter be placed, elected or chosen, in or to any the offices or places aforesaid, that shall not have within one year next before such election or choice, taken the sacrament of the Lord's supper, according to the rites of the church of *England*; (2) and that every such person and persons so placed, elected or chosen, shall likewise take the aforesaid three oaths, and subscribe the said declaration at the same time when the oath for the due execution of the said places and offices respectively shall be administered; (3) and in default hereof, every such placing, election and choice is hereby enacted and declared to be void.

Sett. 13. " Provided always, and be it enacted, That every person who shall be placed in any corporation by virtue of this act, shall upon his admission, take the oath or oaths usually taken by the members of such corporation.

How long the
commissioners
power shall
continue.

Sett. 14. " Provided also, and be it hereby enacted, That the powers granted to the commissioners by virtue of this act, shall continue and be in force until the five and twentieth of *March*, one thousand six hundred sixty-three, and no longer.

Commission-
ers sued may
plead the ge-
neral issue, and
recover treble
costs.

Sett. 15. " Provided, That if any action, bill, plaint or suit shall at any time hereafter happen to be brought or commenced against any person or persons nominated a commissioner, as aforesaid, for any matter or thing by them or any of them done by virtue, or in pursuance of this act, That then it shall be lawful to and for every such person and persons against whom such action, bill, plaint or suit shall be brought or commenced, to plead the general issue, and to give this act, or any other special matter in evidence; (2) and if the verdict shall pass with the defendant or defendants in any such action, or the plaintiff or plaintiffs become nonsuit, or suffer any discontinuance thereof, That in every such case the judge or judges before whom the said matter shall be tried, or be depending, shall by force and virtue of this act, allow unto the defendant or defendants his or their treble costs, which he or they shall have sustained by reason of their wrongful vexation in defence of the said action or suit, for which the said defendant or defendants shall have like remedy as in other cases where costs by the laws of this realm are given to the defendants.

Reversions of
offices in Lon-
don, saved.

Sett. 16. " Provided always, and it is hereby declared, That this act, or any thing therein contained, shall not extend or be to the prejudice of any person or persons whatsoever, that hath any reversion or reversions of any the offices or places belonging to the city of *London*, by force or virtue of any order, grant, designation or nomination of the lord mayor and

court

court of aldermen of the said city heretofore respectively made or granted to him or them before the times of the late wars, for or in respect of such grant, designation or nomination only; any thing in this act to the contrary notwithstanding."

STAT. 25 Car. 2, c. 2, *sect.* 2, 3, 9, &c. relating to the qualification for offices in general. See Oaths.

STAT. 1 Geo. 1, *ft.* 2, c. 13. See Oaths.

STAT. 5 Geo. 1, c. 6, [*A. D.* 1718, intituled] "An act for quieting and establishing corporations."

Seet. 1. "Whereas by an act made in the thirteenth year of king Charles ^{13 Car. 2,} the Second, intituled, *An act for the well governing and regulating of cor-* ^{stat. 2, c. 1.} *porations*, it is (amongst other things) enacted, That every person or persons, who, from and after the expiration of the commissions in the said act mentioned, should be placed, elected, or chosen, in or to any the offices or places of mayors, recorders, bailiffs, town-clerks, common council-men, or to any office or offices of magistracy, or places, or trusts, or other employment relating to or concerning the government of cities, corporations, and boroughs, and cinque-ports and their members, and other port-towns, should at the same time when the oath for the due execution of the said places and offices respectively should be administered, take the following oath: viz.

I *A. B.* do declare and believe, That it is not lawful, upon any pretence ^{The oath in} whatsoever, to take arms against the king: and that I do abhor that ^{the recited} traiterous position of taking arms by his authority against his person, or act against those that are commissioned by him: so help me God.

And subscribe the following declaration: viz.

I *A. B.* do declare, That I hold that there lies no obligation upon me, ^{The declaration.} or any other person, from the oath commonly called, *The Solemn League and Covenant*; and that the same was in itself an unlawful oath, and imposed upon the subjects of this realm against the known laws and liberties of this kingdom.

And that in default thereof every such placing, election, and choice, should be void: and whereas the taking the said oath, and subscribing the said declaration, have, for several years last past, been generally omitted, and questions have of late arisen, whether the said statute, made in the ^{13 Car. 2,} said thirteenth year of king Charles the Second, as to the said oath and ^{stat. 2, c. 1.} declaration, be yet in force: therefore for avoiding of all such questions for the future, and for the establishing the peace and quiet of corporations, be it declared and enacted by the king's most excellent majesty, by and ^{Members of} with the advice and consent of the lords spiritual and temporal, and com- ^{corporations} mons ^{are confirmed}

in their offices, tho' they have not taken the said oath and declaration ;

and indemnified, &c.

So much of the recited act as requires the taking the said oath, &c. repealed.

13 Ca. 2, Stat. 2, c. 1.

Members of corporations, &c. who have omitted to take the sacrament, as enjoined by the said act, shall nevertheless continue in their offices, and be freed from all incapacities, &c. arising from such omission.

mons in this present parliament assembled, and by the authority of the same, That all and every member and members of any corporation within this kingdom, and all and every person and persons that were required by the said above recited act to take the said oath, or subscribe the said declaration, shall be and are hereby confirmed in their several and respective offices and places, notwithstanding their omission to take the said oath, or subscribe the said declaration; and shall be indemnified, freed, and discharged of and from all incapacities, disabilities, forfeitures, and penalties, arising from such omission, and none of their acts shall be questioned or avoided for or by reason of the same; but that all such acts shall be and are hereby declared and enacted to be as good and effectual, as if all and every such person and persons had taken the said oath, and subscribed the said declaration, according to the direction of the said act.

Sec. 2. " And be it also further enacted by the authority aforesaid, That so much of the said statute as requires the taking of the said oath, and subscribing the said declaration, shall be and is hereby repealed; and that neither the said oath or declaration shall be required for the future.

Sec. 3. " And whereas by the said recited act, made in the thirteenth year of king *Charles* the second, it is enacted, That no person or persons shall be placed, elected, or chosen, in or to any the offices or places relating to or concerning the government of any city, corporation, borough, cinque-port and their members, and other port-towns, or any other offices in the said recited act mentioned or expressed, that shall not have, within one year next before such election or choice, taken the sacrament of the Lord's Supper, according to the rites of the church of *England*, and that in default thereof every such placing, election, and choice, shall be void: be it further enacted by the authority aforesaid, That all and every the now member and members of any corporation within this kingdom, and all and every person and persons now in actual possession of any office, that were required by the said above recited act to take the sacrament of the Lord's Supper, according to the rites of the church of *England*, within one year next before his election or choice into such office, shall be and are hereby confirmed in their several and respective offices and places, notwithstanding their omission to take the sacrament of the Lord's Supper as aforesaid, and shall be indemnified, freed, and discharged, of and from all incapacities, disabilities, forfeitures, and penalties, arising from such omission; and that none of their acts, nor the acts not yet avoided, of any who have been members of any corporation, or in actual possession of such offices, shall be questioned or avoided for or by reason of such omission; but that all such acts shall be and are hereby declared and enacted to be as good and effectual as if all and every such person and persons had taken the sacrament of the Lord's Supper in manner as aforesaid; nor shall any person or persons, who shall be hereafter placed, elected, or chosen, in or to any of the offices aforesaid, be removed by the corporation, or otherwise prosecuted, for or by reason of such omission; nor shall any incapacity, disability, forfeiture, or penalty, be incurred by reason of the same, unless such person be so removed, or such prosecution be commenced within six months

months after such person's being placed or elected into his respective office, as aforesaid, and that in case of a prosecution the same be carried on without wilful delay.

STAT. 2 Geo. 2, c. 31. [A. D. 1729, intituled] "An act for indemnifying persons, who have omitted to qualify themselves for offices or employments within the time limited by law, and for allowing further time for that purpose; and for repealing so much of an act of parliament passed in the first year of his late majesty king George the first, as requires persons to qualify themselves for offices or employments within three months, and for limiting other times for such qualifications; as also for the repeal of so much of an act passed 30 Car. 2, as relates to the sworn servants of the king's or queen's majesty."

"For quieting the minds of his majesty's subjects, and preventing the inconveniencies that might otherwise happen to diverse persons, who, on account of their offices, places, employments, or professions, or any other cause, ought to have taken and subscribed the oaths appointed to be taken by such persons, in and by an act made in the first year of the reign of his late majesty king George the first, of glorious memory, intituled, *An act for the further security of his majesty's person and government, and the succession of the crown in the heirs of the late princess Sophia, being protestants, and for extinguishing the hopes of the pretended prince of Wales, and his open and secret abettors*, or to have qualified themselves according to an act made in the twenty-fifth year of the reign of king Charles the second, intituled, *An act for preventing dangers which may happen from popish recusants, by receiving the sacrament of the Lord's Supper, according to the usage of the church of England, and making and subscribing the declaration against transubstantiation therein mentioned*, which said persons have, through the shortness of the time allowed for that purpose, or some accident, omitted to take and subscribe the said oaths, or otherwise to qualify themselves, as aforesaid, within such time, and in such manner, as in and by the said acts respectively, or by any other act of parliament in that behalf made and provided, is required, whereby they may be in danger of incurring diverse penalties and disabilities: be it enacted by the king's most excellent majesty, by and with the advice and consent of the lord's spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That all and every person and persons who shall, on or before the twenty-eighth day of November, in the year of our Lord one thousand seven hundred and twenty nine, take and subscribe the oaths appointed by an act made in the first year of his late majesty king George the first, intituled, *An act for the further security of his majesty's person and government, and the succession of the crown in the heirs of the princess Sophia, being protestants, and for extinguishing the hopes of the pretended prince of Wales, and his open and secret abettors*, in such cases wherein by law the said oaths ought to have been taken and subscribed, in such manner and form, and at such place and

An act 1 Geo. 1, stat. 2, c. 13.

25 Car. 2, c. 2.

Persons before 28 Nov. 1729, qualifying themselves according to the act 1 Geo. 1, stat. 2, c. 13.

indemnified
from all for-
mer omissions.

and places, as are in and by the said act directed, and also receive the sacrament of the Lord's Supper according to the usage of the church of *England*, and make and subscribe the said declaration against transubstantiation, in such cases wherein the said sacrament ought to have been received, and the said declaration ought to have been made and subscribed, shall be, and hereby are indemnified, freed, and discharged of, from, and against all penalties, forfeitures, incapacities, and disabilities, incurred for or by reason of any former neglect or omission of taking or subscribing the said oaths, or receiving the said sacrament, or making and subscribing the said declaration, respectively, according to the above mentioned acts, or either of them, or any other act or acts concerning persons in offices, or places of trust, and is, are, and shall be fully and actually recapacitated and restored to the same state and condition, as such person and persons were in before such neglect or omission, and shall be hereby deemed and adjudged to have duly qualified him, her, or themselves according to the above mentioned acts, and every of them, and that all acts done or to be done, by any such person or persons, or by authority derived from him or them, are and shall be of the same force and validity, as the same, or any of them, would have been, if such person or persons had taken and subscribed the said oaths, and received the sacrament of the Lord's Supper, and made and subscribed the said declaration, according to the direction of the said acts, and every of them; and that such persons qualifying themselves in the manner, and within the time appointed by this act, shall be to all intents and purposes as effectual, as if such person or persons had taken and subscribed the said oaths, and received the said sacrament, and made and subscribed the said declaration, within the time and in the manner appointed by the several acts before mentioned, any law or statute whatsoever to the contrary in any wise notwithstanding.

Offices already avoided
not to be restored.

Sec. 2. " Provided always, That this act, or any thing herein contained, shall not extend, or be construed to extend, to restore or intitle any person or persons to any office or employment, benefice, matter, or thing whatsoever, already actually avoided by judgment of any of his majesty's courts of record, or already filled up, and enjoyed by another person; but such office, employment, benefice, matter, or thing so avoided, or filled up, and enjoyed as aforesaid, shall be and remain in and to the person or persons, who is or are now intitled to the same, as if this act had never been made.

Part of the
act 1 Geo. 1,
stat. 2, c. 13,

Sec. 3. " And whereas the obligation to take and subscribe the oaths appointed to be taken and subscribed by persons, on account of their offices, places, employments, or professions, or any other cause in and by the said act, made in the first year of the reign of his late majesty king *George* the first, is found inconvenient, by reason of the time for taking and subscribing the said oaths is limited to three months after any person's admittance to, or entry upon, any preferment, benefice, office, place, employment, or profession, in the said act mentioned: be it therefore enacted by the authority aforesaid, That so much of the said act, as requires any

any person or persons to take and subscribe the said oaths therein mentioned, within three months after he or they shall be admitted into, or enter upon, such preferment, benefice, office, or place, or come into such capacity, or take upon him or them such practice, employment, or business, as therein is mentioned, shall be, and is by this act absolutely repealed.

requiring the oaths, &c. to be taken in 3 months, repealed.

Sec. 4. " And be it further enacted by the authority aforesaid, That all and every person and persons that shall be admitted, entered, placed, or taken into any office or offices, civil or military, or shall receive any pay, salary, fee, or wages, by reason of any patent or grant from his majesty, his heirs, or successors, or shall have command, or place of trust, from or under his majesty, his heirs, or successors, or by his authority, or by authority derived from him or them, within that part of *Great Britain* called *England*, or in his majesty's navy, or in the several islands of *Fersey* and *Guernsey*, or that shall be admitted into any service, office, or employment, in the household or family of his majesty, or her majesty, or of his royal highness *Frederick* prince of *Wales*, or any other of his majesty's issue; and all ecclesiastical persons, heads or governors, of what denomination soever, and all other members of colleges and halls within either of the universities of *Oxford* or *Cambridge*, that are or shall be of the foundation, or that do or shall enjoy any exhibition, being of, or as soon as they shall attain, the age of eighteen years, and all persons teaching or reading to pupils in either of the aforesaid universities, or elsewhere; and all schoolmasters and ushers, and all preachers and teachers of separate congregations, high or chief constables, and every person that shall act as a serjeant at law, counsellor at law, barrister, advocate, attorney, solicitor, proctor, clerk, or notary, by practising in any manner as such in any court or courts whatsoever, within that part of *Great Britain* called *England*, who shall, at any time after the twenty-first day of *January*, one thousand seven hundred and twenty-eight, be admitted into, or enter upon, any of the above mentioned preferments, benefices, offices, or places, or shall come into any such capacity, or shall take upon him or them any such practice, employment, or business, as aforesaid, shall take and subscribe the oaths appointed by the statute made in the first year of the reign of his late majesty king *George* the first, at such places, and in such form, as by that statute is directed, in his majesty's court of chancery, king's bench, common pleas, or exchequer, at any time before the end of the next term, after he or they shall be admitted into, or enter upon, any such preferment, benefice, office, or place, or come into such capacity, or take upon him or them such practice, employment, or business, as aforesaid, shall take and subscribe the said oaths, as aforesaid, at any time before the end of the next quarter sessions of the county, city, or place, where such person shall be or reside, after he or they shall be admitted into, or enter upon, any such preferment, benefice, office, or place, or come into any such capacity, or take upon him or them such practice, employment, or business, as aforesaid.

The time limited for such qualifications.

Persons beyond the sea may qualify themselves within 4 months after their arrival.

Secl. 5. " Provided also, That nothing in this act shall extend to any person beyond the seas, who by virtue of this act ought to take and subscribe the said oaths, so as such person do, within four months after his return to, and arrival in, that part of *Great Britain* called *England*, take and subscribe the said oaths, in such manner and form, and at such place and places, as are appointed in and by the said act, made in the first year of the reign of his said late majesty king *George* the first, and also receive the sacrament of the Lord's Supper, according to the usage of the church of *England*, and make and subscribe the said declaration against transubstantiation, in such cases wherein the said sacrament ought to have been received, and the said declaration ought to have been made and subscribed.

Persons within the times hereby limited neglecting to qualify themselves, liable to the disabilities in 1 Geo. 1, stat. 2, c. 13.

Secl. 6. " Provided always, and it is hereby further enacted by the authority aforesaid, That all and every person and persons aforesaid, that shall neglect or refuse to take the said oaths, or either of them, within the time, and at the places aforesaid, according to the directions of this act, shall be liable unto, and incur all such disabilities, incapacities, forfeitures, and penalties, as in and by the said act of the first year of the reign of his late majesty king *George* the first are provided and inflicted for not taking and subscribing the said oaths; and in case of executing any such office, place, or employment, after such neglect or refusal, every such person and persons, being thereof lawfully convicted in such manner as by the said act is directed, shall be liable unto, and incur all such disabilities, incapacities, forfeitures, and penalties, as in and by the said act are in the like case provided and inflicted, to be prosecuted, sued for, and recovered, in such manner as therein is prescribed.

All the powers of 1 Geo. 1, to be in force.

Secl. 7. " And it is hereby further enacted by the authority aforesaid, That all and every the powers, authorities, conditions, directions, and provisions, in and by the said act of the first year of the reign of his late majesty king *George* the first, enacted or provided, touching or relating to the taking or subscribing of the said oaths, or the neglect or refusal thereof, or in consequence of such taking or subscribing the said oaths, or neglect or refusal thereof, shall be adjudged, deemed, and taken to be in full force, as if the same were herein particularly inserted and re-enacted, saving as to the alteration hereby made in respect of the times limited for taking and subscribing the said oaths; and saving also as to the indemnity hereby granted to such, who, on or before the twenty eighth day of *November* next, shall take and subscribe the said oaths; any thing herein before contained to the contrary thereof in any wise notwithstanding.

Exceptions.

Secl. 8. " And whereas by a clause in an act of parliament passed in the thirteenth and fourteenth years of the reign of his late majesty king *Charles* the second, intituled, *An act for uniformity of prayers, and administration of sacraments, and other rites and ceremonies, and for establishing the form of making, ordaining, and consecrating bishops, priests, and deacons, in the church of England*, it is amongst other things enacted, That all masters, fellows, chaplains, and tutors, of or in any college, hall, house of learning, or hospital, and every public professor and reader in any of the universities,

13 & 14 C². 2, c. 4.

ties, should take and subscribe the declaration therein mentioned, and directed to be subscribed, before the vice-chancellor for the time being, or his deputy, upon pain of forfeiting their respective masterhips, headships, fellowships, professors places, and readers places in the said universities; notwithstanding which several persons have, through inadvertency, omitted to subscribe the said declaration, and have thereby incurred the penalties inflicted by the said act: now for the relief of such masters, fellows, professors, and readers, in any of the said universities as have neglected to subscribe the said declaration, be it enacted by the authority aforesaid,

That all and every the masters, fellows, chaplains, and tutors, of or in any college, hall, house of learning, or hospital, and every public professor and reader in any of the universities, who have neglected or omitted to subscribe the said declaration, and shall, before the twenty-fifth day of *December*, one thousand seven hundred and twenty-nine, take and subscribe the said declaration before such person, and in such manner, as required by the said act passed in the thirteenth and fourteenth years of his said late majesty king *Charles* the second, or any other act or acts of parliament requiring the taking and subscribing the same, shall be and are hereby indemnified from all forfeitures, disabilities, and incapacities, inflicted by the said act, and shall be restored to their respective headships, fellowships, professors places, and readers places: provided, That this act shall not extend to restore any such person or persons to any headship, fellowship, professor's place, or reader's place, who, through such neglect or omission as aforesaid, hath or have forfeited the same, and which are already filled up or enjoyed by any other person or persons.

SECT. 9. "Whereas all persons, having command or place of trust from or under his majesty, or who are of the household, or in the service of his majesty, are bound by an act passed in the twenty-fifth year of the reign of the late king *Charles* the second, intituled, *An act for preventing dangers which may happen from popish recusants*, to make and subscribe a declaration against transubstantiation in the sacrament of the Lord's Supper; and the sworn servants of the king's or queen's majesty are bound, by an act made in the thirtieth year of the reign of the said king *Charles* the second, intituled, *An act for the more effectual preserving the king's person and government, by disabling papists from sitting in either house of parliament*, to repeat and subscribe a like declaration against transubstantiation, together with some additions, and the declaration only against transubstantiation being, as to these persons, sufficient; be it further enacted by the authority aforesaid, That so much of the said last mentioned act, as relates to the sworn servants of the king's or queen's majesty, shall be repealed; and if any such person hath offended contrary to such part of the said act, intended to be hereby repealed, he shall be freed from all penalties and incapacities incurred thereby.

Times limited for masters, fellows, &c. in the universities to qualify themselves.

So much of the act 25 Car. 2, c. 2, as relates to the king's sworn servants repealed.

STAT. 9 Geo. 2, c. 26, [A. D. 1736.] made, among other purposes, "for indemnifying persons who have omitted to qualify themselves for offices within

within the time limited by law, and for allowing further time for that purpose; and for amending so much of an act passed in the second year of the reign of his present majesty, as requires persons to qualify themselves for offices before the end of the next term or quarter-sessions; and also for enlarging the time limited by law for making and subscribing the declaration against transubstantiation."

Preamble, re-
citing the acts
1 Geo. 1, c. 13.

25 Car. 2, c. 2.

Persons tak-
ing the oaths,
receiving the
sacrament, &c.
by 1 Aug.
1736, indem-
nified,

"Whereas divers persons, who on account of their offices, places, employments, or professions, or any other cause or occasion, ought to have taken and subscribed the oaths or the assurance respectively appointed to be taken by such persons, in and by an act made in the first year of the reign of his late majesty king *George the first*, of glorious memory, intituled, *An act for the further security of his majesty's person and government, and the succession of the crown in the heirs of the late princess Sophia, being protestants, and for extinguishing the hopes of the pretended prince of Wales, and his open and secret abettors*, or to have qualified themselves according to an act made in the twenty-fifth year of the reign of king *Charles the second*, intituled, *An act for preventing dangers which may happen from popish recusants, by receiving the sacrament of the Lord's Supper, according to the usage of the church of England, and making and subscribing the declaration against transubstantiation therein mentioned*, have, through ignorance of the law, absence, the shortness of the time allowed for that purpose, or some unavoidable accident, omitted to take and subscribe the said oaths or assurance, or otherwise to qualify themselves, as aforesaid, within such time, and in such manner, as in and by the said acts respectively, or by any other act of parliament in that behalf made and provided, is required, whereby they may be in danger of incurring diverse penalties and disabilities: for quieting the minds of his majesty's subjects, and for preventing any inconveniencies that might otherwise happen by means of such omissions, be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That all and every person or persons who shall, on or before the first day of *August*, in the year of our Lord one thousand seven hundred and thirty-six, take and subscribe the said oaths and assurance respectively, in such cases wherein by law the said oaths or assurance ought to have been taken and subscribed, in such manner and form, and at such place and places, as are appointed in and by the said act made in the first year of the reign of his said late majesty king *George the first*, and also receive the sacrament of the Lord's Supper according to the usage of the church of *England*, and make and subscribe the said declaration against transubstantiation, in such cases wherein the said sacrament ought to have been received, and the said declaration ought to have been made and subscribed, shall be and are hereby indemnified, freed, and discharged of, from, and against all penalties, forfeitures, incapacities, and disabilities, incurred or to be incurred for or by reason of any former neglect or omission of taking or subscribing the said oaths or assurance, or receiving the said

said sacrament, or making or subscribing the said declaration respectively, and their acts according to the above mentioned acts, or any of them, or any other act valid. or acts concerning persons in offices or places of trust, and is and are and shall be fully and actually recapacitated and restored to the same state and condition, as such person and persons were in before such neglect or omission, and shall be deemed and adjudged to have duly qualified, him, her, or themselves, according to the above mentioned acts, and every of them, and that all acts done or to be done by any such person or persons, or by authority derived from him or them, are and shall be of the same force and validity, as the same, or any of them, would have been, if such person or persons had taken and subscribed the said oaths and assurance, and received the sacrament of the Lord's supper, and made and subscribed the said declaration respectively, according to the direction of the said acts, and every of them; and that such person or persons qualifying themselves in the manner and within the time appointed by this act, shall be to all intents and purposes as effectual, as if such person or persons had respectively taken and subscribed the said oaths and assurance, and received the said sacrament, and made and subscribed the said declaration, within the time and in the manner appointed by the several acts before mentioned.

Seet. 2. " Provided always, That this act, or any thing herein contained, shall not extend, or be construed to extend, to restore or intitle any person or persons to any office or employment, benefice, matter, or thing whatsoever, already actually avoided by judgment of any of his majesty's courts of record, or already filled up or enjoyed by another person; but such office, employment, benefice, matter, or thing, so avoided, or filled up and enjoyed as aforesaid, shall be and remain in and to the person or persons who is or are now intitled to the same, as if this act had never been made. This act not to restore to any office, &c. already vacated, or enjoyed by another person.

Seet. 3. " And whereas the time for taking and subscribing the oaths appointed to be taken and subscribed by persons on account of their offices, places, employments, or professions, or on any other cause, in and by the said act made in the first year of the reign of his late majesty king George the first, is, by an act made in the second year of the reign of his present majesty, intituled, *An act for indemnifying persons who have omitted to qualify themselves for offices and employments within the time limited by law, and for allowing further time for that purpose, and for repealing so much of an act of parliament passed in the first year of his late majesty king George the first, as requires persons to qualify themselves for offices or employments within three months, and for limiting other times for such qualifications; as also for the repeal of so much of an act passed in the thirtieth year of the reign of king Charles the second, as relates to the sworn servants of the king's or queen's majesty,* limited to any time before the end of the next term, after he or they shall be admitted into or enter upon any such preferment, benefice, office, or place, or come into such capacity, or take upon him or them such practice, employment, or business, as is therein mentioned, or at any time before the end of the next quarter sessions of the county, city, or place, where such person shall be or reside, after he or they shall be admitted into, The indemnifying act, 2 Geo. II, c. 31.

All persons
admitted into
any prefer-
ments or
places after
1 Aug. 1736,
to take the
oaths, &c.
within six
months after
admission.

or enter upon any such preferment, benefice, office, or place, or come into any such capacity, or take upon him or them such practice, employment, or business, as is therein mentioned: and whereas by the said act made in the twenty-fifth year of the reign of king *Charles* the Second, the respective persons therein mentioned are required to make and subscribe the declaration against transubstantiation in the next term, or at the quarter-sessions for that county or place where he or they shall reside; next after his or their admittance or admittances into the respective offices or employments therein mentioned, which times so limited in the said several acts are found to be too short and inconvenient: now for remedy thereof, and for amending the said acts by enlarging the said times, be it enacted by the authority aforesaid, That all and every person and persons that shall be admitted, entered, placed, or taken into any office or offices, civil or military, or shall receive any pay, salary, fee, or wages, by reason of any patent or grant from his majesty, his heirs, or successors, or by his authority, or by authority derived from him or them within that part of *Great Britain* called *England*, or in his majesty's navy, or in the several islands of *Jersey* and *Guernsey*, or that shall be admitted into any service, office, or employment, in the household or family of his majesty, or her majesty, or of his royal highness *Frederick* prince of *Wales*, or any of his majesty's issue, and all ecclesiastical persons, heads, or governors, of what denomination soever, and all other members of colleges and halls within either of the universities of *Oxford* or *Cambridge*, that are or shall be of the foundation, or that do or shall enjoy any exhibition, being of, or as soon as they shall attain, the age of eighteen years, and all persons teaching or reading to pupils in either of the aforesaid universities, or elsewhere, and schoolmasters and ushers, and all preachers and teachers of separate congregations, high or chief constables, and every person who shall act as serjeant at law, counsellor at law, barrister, advocate, attorney, solicitor, proctor, clerk, or notary, by practising in any manner as such in any court or courts whatsoever, within that part of *Great Britain* called *England*, who shall at any time after the first day of *August*, in the year of our Lord one thousand seven hundred and thirty-six, be admitted into, or enter upon, any of the aforementioned preferments, benefices, offices, or places, or shall come into any such capacity, or shall take upon him or them any such practice, employment, or business, as aforesaid, shall take and subscribe the oaths appointed by the said statute made in the first year of the reign of his late majesty king *George* the First, in such form, as by that statute is directed, in his majesty's court of chancery, king's bench, common pleas, or exchequer, or at the general or quarter sessions of the county, city, or place, where such person shall be or reside, at any time within six calendar months after he or they shall be admitted into, or enter upon any such preferment, benefice, office, or place, or come into such capacity, or take upon him or them such practice, employment, or business, as aforesaid; and all and every person or persons, who, by the said act made in the twenty-fifth year of the reign of king *Charles* the Second, are required to make and subscribe the declaration against transubstantiation, shall

shall make and subscribe the said declaration at the same places, and at the same times, as are by this act limited for taking and subscribing the oaths aforesaid.

Sett. 4. " Provided always, That nothing in this act shall extend to any person beyond the seas, who by virtue of this act ought to take and subscribe the said oaths, or by virtue of the said act made in the twenty-fifth year of king *Charles* the Second ought to make and subscribe the said declaration, so as such person do within six kalendar months after his return to or arrival in that part of *Great Britain* called *England*, take and subscribe the said oaths, in such manner and form, and at such place and places, as are appointed in and by the said act made in the first year of the reign of his late majesty king *George* the First; and also receive the sacrament of the Lord's supper according to the usage of the church of *England*, and make and subscribe the said declaration against transubstantiation, in such cases wherein the said sacrament ought to have been received and the said declaration ought to have been made and subscribed.

Sett. 5. " Provided always, and it is hereby further enacted by the authority aforesaid, That all and every person and persons aforesaid that shall neglect or refuse to take the said oaths, or who shall neglect or refuse to make and subscribe the said declaration in cases where the same ought to be made and subscribed, within the time and at the places aforesaid according to the directions of this act, shall be liable unto and incur all such disabilities, incapacities, forfeitures, and penalties, as in and by the said act of the first year of the reign of his late majesty king *George* the First are provided and inflicted for not taking and subscribing the said oaths, or are provided and inflicted by the said act made in the twenty-fifth year of the reign of king *Charles* the Second for not making and subscribing the said declaration; and in case of executing any such office, place, or employment, after such neglect or refusal as aforesaid, every such person and persons, being thereof lawfully convicted in such manner as by the said several acts is directed, shall be liable unto and incur all such disabilities, incapacities, forfeitures, and penalties, as in and by the said acts are provided, to be prosecuted, sued for, and recovered in such manner as therein is prescribed.

Sett. 6. " And it is hereby further enacted by the authority aforesaid, That all and every the powers, authorities, conditions, directions, and provisions in and by the said acts of the first year of the reign of his late majesty king *George* the First, and of the twenty-fifth year of the reign of king *Charles* the Second, enacted or provided touching or relating to the taking and subscribing of the said oaths, and the making and subscribing the said declaration, or the neglect or refusal thereof, shall be adjudged, deemed, and taken to be in full force, as if the same were herein particularly inserted, and re-enacted, except only as to the alteration by this act made in respect of the times limited for taking and subscribing the said oaths, and making and subscribing the said declaration, and also as to the indemnity hereby granted to such who on or before the first day of *August*, one thousand seven hundred and thirty-six, shall take and sub-

scribe.

scribe the said oaths, and make and subscribe the said declaration, and receive the sacrament of the Lord's supper according to the usage of the church of *England*, where the same are respectively required by law; any thing herein before contained to the contrary thereof in any wise notwithstanding."

STAT. 31 *Geo. 2, c. 22, [A. D. 1758]* made, among other purposes, "for granting to his majesty several rates and duties upon offices and pensions."

Preamble.

"We, your majesty's most dutiful and loyal subjects, the commons of *Great Britain*, in parliament assembled, being desirous, by the most easy and effectual ways and means, to raise such supplies as are necessary for the prosecution of the present war, and for enabling your majesty, at the end thereof, to establish a good and lasting peace, have, for that end and purpose, given and granted, and, by this present act, do give and grant, unto your majesty, the several and respective duties, impositions, and sums of money, following, as well for and upon all salaries, fees, and perquisites, of offices and employments in *Great Britain*, and on all pensions and other gratuities payable out of any revenues belonging to your majesty in *Great Britain*, exceeding the value of one hundred pounds *per annum*, as for and upon such houses, and windows or lights, as are herein after mentioned; and do most humbly beseech your majesty that it may be enacted; and be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That from and after the fifth day of *April*, one thousand seven hundred and fifty-eight, there shall be yearly raised, levied, and paid, unto his majesty, his heirs, and successors, the sum of one shilling, over

Employments of profit, pensions, and gratuities, exceeding 100l. *per annum*, to pay 1s. *per* pound.

and above all other duties already charged or payable, for every twenty shillings of the yearly value or amount of all salaries, fees, and perquisites, incident unto, or received for or in respect of, all offices and employments of profit in *Great Britain*; and the like sum of one shilling for every twenty shillings, of all pensions and other gratuities payable out of any revenue belonging to his majesty in *Great Britain*, exceeding the value of one hundred pounds *per annum*.

Duty on such as are payable at the exchequer, to be deducted and kept by the officers there;

Secl. 2. "And for the better raising, levying, and receiving, the said several sums of money and duties hereby charged for and upon the said offices and employments of profit; and for and upon the pensions and gratuities aforesaid; and for the more effectual putting of this act in execution in reference to the same, it is hereby declared and enacted, That a deduction shall be made of the said sum of one shilling out of every twenty shillings, payable for, or in respect of, the salary, wages, or fees, of any offices and employments payable by the crown in *Great Britain*, which exceed one hundred pounds *per annum*; and for or in respect of any pension or gratuity which is or shall be payable out of any revenue belonging to his majesty in *Great Britain*, exceeding the value of one hundred pounds *per annum*; and that the money so deducted by the officers

of his majesty's exchequer in *England*, shall remain there for the purposes herein after declared; and such part of the said money as shall be so deducted by any officer or officers of the duchies of *Lancaster* and *Cornwall*, or by any other commissioners, officers, and persons, by whom the said salaries, wages, fees, pensions, and gratuities, are or shall be respectively payable in *England*, shall be by them paid into the receipt of his majesty's exchequer at *Westminster*; and such part of the said money as shall be so deducted by any of the officers of the court of exchequer in *Scotland*, or by any commissioners, officers, or other persons, by whom the said salaries, wages, fees, pensions, and gratuities, are or shall be respectively payable in *Scotland*, shall be paid at the city of *Edinburgh*, to such person or persons as the commissioners of the treasury, or the high treasurer of *Great Britain* for the time being, shall constitute and appoint to be receiver-general, or receivers thereof, for his majesty's use; which said general receiver or receivers shall pay the same into the receipt of his majesty's exchequer at *Westminster*; and the officers of the exchequer are hereby directed and required to keep separate and distinct accounts of all sums of money by them respectively retained or received, for or in respect of the said duty on offices, and on pensions and other gratuities, by virtue of this act, in order that the same may be applied to the purposes in this act mentioned, and to and for no other use or purpose whatsoever.

Seet. 3. "And whereas the profits of several offices and employments in *Great Britain*, arise in the whole, or in part, from perquisites, which are due and payable in the course of office; it is hereby further enacted, That such part of the sums of money hereby granted, as are payable for or in respect of the profits of any office or employment, in any part of *England*, *Wales*, and *Berwick upon Tweed*, which arise from such perquisites, shall be computed, raised, levied, and paid, according to the annual value at which such profits stand valued and rated in the last assessment to the land-tax.

Seet. 4. "Provided always, That such profits arising from such perquisites as aforesaid, shall be deemed and taken to have been valued and rated in such last assessment to the land-tax, at so much only, as the entire sum, at which any such office was valued and rated in the said assessment, does exceed the amount of the salary, wages, or fees, payable as aforesaid, in respect of the same office.

Seet. 5. "And be it further enacted by the authority aforesaid, That for the better rating, ordering, levying, and collecting, of the duty by this act charged, upon such perquisites of such of the said offices or employments as are in that part of *Great Britain* called *England*, *Wales*, and *Berwick upon Tweed*; and for the more effectual putting of this act in execution, in reference to the same; the commissioners of the land-tax for the time being, within the several counties, cities, boroughs, cinque-ports, towns, and places, of *England*, *Wales*, and town of *Berwick upon Tweed*, shall be commissioners for putting so much of this act in execution, as relates to the duty hereby charged upon the perquisites of offices

Commissioners to meet on or before 3d July yearly;

and subdivide themselves, &c.

Commissioners at their general meeting, or within 8 days after to rate the amount of the duty payable, on all offices and employments of profit, in proportion to the value at which they stand rated to the last land-tax.

Duplicates thereof to be signed, &c. by them, and one delivered to the collectors, &c. with warrant for collecting.

Persons aggrieved by be-

Sett. 6. " And be it further enacted and declared, That the several commissioners aforesaid, shall meet together at the most usual and common places of meeting within each of the said counties, ridings, cities, boroughs, cinque-ports, towns, and places respectively, within *England, Wales*, and town of *Berwick upon Tweed*, for which they are appointed commissioners as aforesaid, yearly on or before the third day of *July*, and afterwards in like manner, as often as it shall be necessary for putting so much of this act in execution, as is hereby committed to their care and charge; and the said commissioners, or so many of them as shall be present at such meeting or meetings, or the major part of them, are hereby authorized and required, to put so much as aforesaid of this present act in execution, and shall also, if they see cause, subdivide and distribute themselves, and the other commissioners not then present, into less numbers, so as three or more of the said commissioners may be appointed for the service of each hundred, lathes, wapentake, rape, ward, or other division, as may best conduce to the carrying on his majesty's services, hereby required; nevertheless, not thereby to restrain the said commissioners, or any of them, from acting as commissioners in any other part of the county or place for which they are appointed; and the said commissioners, within the several hundreds, lathes, wapentakes, rapes, wards, or other divisions, in *England, Wales*, and *Berwick upon Tweed*, or any two or more of them, are hereby authorized and required at such general meeting, or within eight days after, according to the best of their judgments and discretions, to ascertain and set down in writing, in a rate to be prepared by them for that purpose, the amount of the said duty of one shilling in the pound, to be paid in pursuance of this act, by all commissioners or other officers, their clerks, agents, secondaries, substitutes, and other inferior ministers and persons whatsoever, having, using, or exercising any of the said offices or employments, the salary, wages, fees, and perquisites whereof, exceed the value of one hundred pounds *per annum*, within their respective hundreds, lathes, wapentakes, rapes, wards, or other divisions, in proportion to the annual value, at which the profits of such offices or employments respectively stand valued and rated, in the last assessment to the land-tax, for the said respective hundreds and divisions respectively: and to the end the aforesaid duty on such perquisites of offices and employments may be duly collected, and true accounts thereof made, the said commissioners, or any three or more of them, are hereby required and ordered, within the time above limited, to sign and seal two duplicates of the said rates hereby directed to be made by them, and one of them to deliver, or cause to be delivered, to such persons as shall then be collectors of the land-tax for each parish and place, or to such other two or more honest and responsible persons, which the said commissioners shall at their discretion nominate and appoint, to be collectors of this present duty, for each parish, or place, with warrant to the collectors to collect the sums contained in such rates, respectively payable as aforesaid, so as the said several sums may be paid to the receiver general at the respective times herein limited; and if any person or persons shall

shall think himself or themselves aggrieved, by being over-rated by the said commissioners, it shall and may be lawful to and for such person or persons, to appeal from the same to the barons of his majesty's court of Exchequer, and the barons of the said court, or any one or more of them, is and are hereby authorized and required to hear and determine all such appeals, on or before the last day of *Michaelmas* term yearly; and the said collectors are hereby required, upon the application of any person or persons who shall think himself or themselves over-rated to the said rates, to permit such person or persons, or their stewards or bailiffs, or other proper representatives; to inspect the duplicates of such rates, upon the division or district of which he is collector, at all seasonable times in the day, without any fee or reward for the same; and every person so intending to appeal to the said barons, shall, and he is hereby required to give notice thereof in writing, to one or more of the collectors of the parish wherein he is rated, of such his intention to appeal; and it is hereby declared, that all appeals once heard and determined by the said barons, or any one or more of them, shall be final, without any further appeal upon any pretence whatsoever: And the said commissioners are hereby required to deliver, or cause to be delivered, a schedule or duplicate in parchment, under their hands and seals, fairly written, containing the whole sum rated within each parish or place, unto the receiver general of each county, riding, city, borough, town, and place respectively, in *England, Wales, and Berwick upon Tweed*, or his deputy; and shall transmit, or cause to be transmitted, a like schedule or duplicate into the king's remembrancer's office of the Exchequer; and this the said commissioners shall cause to be done, upon or before the first day of *Hilary* term, or within twenty days after (all appeals being first determined) for which duplicates the remembrancer, or his deputy, shall give to the person who brings the same, a receipt in writing *gratis*.

Seff. 7. " And be it enacted by the authority aforesaid, That the said duty by this act imposed upon offices or employments within that part of the kingdom of *Great Britain* called *England, Wales, and Berwick upon Tweed*, as aforesaid, shall in all respects, (save as is herein otherwise enacted and provided) be raised, levied, collected, and paid into his majesty's Exchequer, for the purpose in this act expressed, in such and in like form and manner, and with such allowances, and under such penalties, forfeitures, and disabilities, and according to such rules, methods, and directions, as are prescribed or appointed for raising, levying, collecting, and paying the aid commonly called *The Land Tax*, within *England, Wales, and Berwick upon Tweed*, in and by an act of parliament made and passed in this present session of parliament, intituled, *An act for granting an aid to his majesty by a land-tax, to be raised in Great Britain, for the service of the year one thousand seven hundred and fifty-eight; and for enforcing the payment of the rates to be assessed upon Somerset House in the Strand; and all and every the powers, authorities, rules, directions, penalties, forfeitures, clauses, matters, and things contained in the said act, for the raising, levying, collecting, and paying the rates or duties thereby granted, within England,*

ing overrated, may appeal to the barons of the exchequer.

Collectors to permit inspection of the rates.

Notice to be given them of intention to appeal.

Appeals once heard and determined to be final.

A duplicate in parchment of the rate to be delivered to the receiver-general; and one to the remembrancer's office, by the first day of *Hilary* Term, or 20 days after (all appeals first determined.)

Duty to be raised, collected, and paid, in like manner, and with such allowances, and under such penalties, &c. as the land-tax of this session.

Wales, or Berwick upon Tweed, (so far forth as the same are not with respect to the duties granted by this present act varied and altered) shall be in full force, and be duly observed, practised, and put in execution, for raising, levying, collecting, and paying the said duty by this act imposed on offices and employments, within *England, Wales, and Berwick upon Tweed*, as fully and effectually to all intents and purposes, as if the same or the like powers, authorities, rules, directions, penalties, forfeitures, clauses, matters, and things, were particularly repeated and re-enacted in the body of this present act.

Their royal highnesses the princess dowager of *Wales*, and prince of *Wales*, not chargeable,

nor their officers or servants;

nor his royal highness the duke of *Cumberland*, nor the princess royal, nor princess *Amelia*.

Perquisites of offices and employments to pay where last assessed.

First half-yearly payment to be made on or before 10 October, and the last on or before 5 April yearly.

Receiver general within a month after

SecT. 8. " Provided always, and it is hereby declared, That this act, or any thing herein contained, shall not charge or be construed to charge her royal highness the princess dowager of *Wales*, or his royal highness the prince of *Wales*, with the above-mentioned duty or payment of one shilling out of every twenty shillings, by the year, for or in respect of any sums of money or annuities given or granted by his majesty to their said royal highnesses, or the officers or servants attending their persons; but that such sums of money and annuities, and their royal highnesses, and their treasurers, or receivers-general for the time being, shall be free and clear of all taxes, impositions, and other public charges whatsoever; any thing in this or any former act to the contrary in any wise notwithstanding.

SecT. 9. " And be it further enacted by the authority aforesaid, That this act, or any thing herein contained, shall not charge or be construed; deemed, or taken, to charge his royal highness the duke of *Cumberland*; or her royal highness the princess royal, or her royal highness the princess *Amelia*, or the officers or servants attending their persons, with the above-mentioned duty or payment of one shilling out of every twenty shillings, by the year, for or in respect of any annuities or yearly payments granted or to be granted by his majesty to their said royal highnesses, and their servants, for the time being, in respect of the same; but that such sums of money or annuities, shall be free and clear from all taxes, impositions, and other charges whatsoever.

SecT. 10. " Provided always, and be it further enacted and declared by the authority aforesaid, That for the avoiding all obstructions and delays in collecting the duty by this act to be rated upon the perquisites of any offices or employments, the same shall pay and be rated in such county, hundred, rape, wapentake, constablewick, division, or place of allotment, within *England, Wales, and Berwick upon Tweed* in which the same were last assessed, and not elsewhere.

SecT. 11. " And be it further enacted, That the first half-yearly payment of the said assessments for *England, Wales, and town of Berwick upon Tweed*, shall be levied, collected, and paid unto the receivers-general of the said several counties, cities, and other places, who shall be appointed as aforesaid, on or before the tenth day of *October* yearly; and the last of the said half-yearly payments, on or before the the fifth day of *April* yearly.

SecT. 12. " And be it further enacted by the authority aforesaid, That every receiver-general in *England, Wales, and Berwick upon Tweed*, from time

time to time, within the space of one month next after he shall have received the full sum that shall be charged within any hundred or division, for such particular payment that is to be made to such receiver-general by virtue of this act, shall give to such commissioners as shall act in such division or hundred, a receipt under his hand and seal, acknowledging the receipt of the full sum charged within such hundred or division, for such particular payments; which receipt shall be a full discharge to each hundred or division, for such particular payment, against his majesty, his heirs, and successors; which said receivers-general are hereby required forthwith, or at furthest within twenty days after the receipt of any money of the taxes or duties by this act granted, to transmit or cause to be paid the money by them received into the receipt of his majesty's exchequer.

Sec. 13. "And be it further enacted, That if any collector of any parish or place in *England, Wales, or Berwick upon Tweed*, shall keep in his hands any part of the money by him collected for any longer time than is by this act directed (other than the allowance made unto him by this act) or shall pay any part thereof to any person or persons other than the receiver general of such county or place, or to his respective deputy, that every such collector shall forfeit for every such offence, the sum of forty pounds; and in case any receiver-general of any part of *England, Wales, or Berwick upon Tweed*, or his deputy, shall pay any part of the monies paid to him or them by any collector by virtue of this act, to any person or persons whatsoever, other than into the receipt of his majesty's exchequer, and at or within the respective times limited by this act; or in case any such receiver-general of any part of *England, Wales, or Berwick upon Tweed*, or his deputy, shall pay any part of the said monies by any warrant of the high treasurer, commissioners of the treasury, or under-treasurer, for the time being, or upon any tally of pro, or tally of anticipation, or other way or device whatsoever, whereby to divert or hinder the actual payment thereof into the receipt of the exchequer, as aforesaid, then every such receiver-general shall, for every such offence of himself, or his deputy, forfeit the sum of five hundred pounds to him or them that shall sue for the same in any court of record, by bill, plaint, or information; wherein no essoin, protection, or wager of law, is to be allowed.

STAT. 32 Geo. 2. c. 33; [A. D. 1759, intituled] "An act to explain and amend an act made in the last session of parliament, intituled, *An act for granting to his majesty several rates and duties upon offices and pensions; and upon houses; and upon windows or lights; and for raising the sum of five millions by annuities and a lottery; to be charged on the said rates and duties; so far as the same relates to the rates and duties on offices and pensions.*"

"Whereas by an act made in the last session of parliament, intituled, *An act for granting to his majesty several rates and duties upon offices and pensions; and upon houses; and upon windows or lights; and for raising the sum of five millions by annuities and a lottery, to be charged on the said rates and duties,*

Preamble reciting clauses in an act of last session.

duties, it is (among other things) declared and enacted, That a deduction shall be made of the sum of one shilling out of every twenty shillings payable for or in respect of the salary, wages, or fees, of any offices and employments payable by the crown in *Great Britain*, which exceed one hundred pounds *per annum*; and for or in respect of any pension or gratuity, which is or shall be payable out of any revenue belonging to his majesty in *Great Britain*, exceeding the value of one hundred pounds *per annum*; and that the money so deducted by the officers of his majesty's exchequer in *England*, shall remain there for the purposes in the said act declared; and that such part of the money as shall be so deducted by any officer or officers of the dutchies of *Lancaster* and *Cornwall*, or by any other commissioners, officers, and persons, by whom the said salaries, wages, fees, pensions, and gratuities, are or shall be respectively payable in *England*, shall be by them paid into the receipt of his majesty's exchequer at *Westminster*: and whereas the said recited directions may be expensive in the execution thereof, by subjecting each of the officers, commissioners, and persons, by the said act required to make the deduction aforesaid, to a separate account before the auditors of the imprests, for the several sums by them respectively deducted: and whereas the said recited directions have appeared to be in other respects inconvenient; be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That all sums of money which on the fifth day of *July*, one thousand seven hundred and fifty-nine, and afterwards from time to time, shall become due, and be deducted by virtue of the said act, for or in respect of the salaries, fees, or wages, of any offices and employments payable by the crown in that part of *Great Britain* called *England*, *Wales*, or *Berwick upon Tweed*, and for or in respect of any pension or gratuity payable out of any revenue belonging to his majesty, in *England*, *Wales*, or *Berwick upon Tweed*, shall, by the commissioners, officers, and persons deducting the same, be respectively paid into the hands of a receiver or receivers to be for that purpose appointed by his majesty, his heirs, and successors; and it shall and may be lawful to and for such receiver or receivers to retain, out of the monies so paid into his or their hands, as aforesaid, such sum, as a reward or compensation for his or their trouble, as his majesty, his heirs, and successors shall appoint, not exceeding three pence in the pound; and the said receiver or receivers shall give security for their good behaviour in discharging the trust in them reposed, by giving bond in such penalty, and with such surety or sureties, as the commissioners of his majesty's treasury for the time being, or any three or more of them, or the lord high treasurer for the time being, shall think fit; and the payments of the several sums so deducted as aforesaid, shall be made into the hands of such receiver or receivers, in the course of the quarter wherein the said sums shall have been deducted; and such receiver or receivers shall, within the compass of the next ensuing quarter, pay the same sums respectively into the receipt of his majesty's exchequer at *Westminster*: and the several commissioners, officers, and persons, making the deductions

Sums deducted for the duties upon offices and pensions in *England*, to be paid over to receivers to be appointed by his majesty.

3d. in the pound allowed him for his trouble.

Security to be given by him.

Deductions of the duties to be paid over quarterly to the receiver, and by him, within the quarter following, into the exchequer.

deductions aforesaid, are hereby directed and required, at the request of An account
such receiver or receivers, to deliver to him or them a just and true ac- of the salaries,
count of all and every the salaries, fees, and wages, and likewise of the fees, and pen-
annual pensions and gratuities by the said commissioners, officers, and per- sions, &c. to be
sons respectively payable, and of the names of the persons intitled to re delivered to
ceive the same; of which accounts the said receiver or receivers are to en the receivers;
ter exact copies in books to be by them kept for that purpose. and entered
by them in
proper books.

Señ. 2. " And be it further enacted by the authority aforesaid, That The monies
all sums of money which have been, or ought to have been, deducted or which have
retained under the said act, by the officers of the exchequer, or of any been, or ought
other office, or by any commissioner or commissioners, or other persons, to have been
in *England, Wales, or Berwick upon Tweed*, for the duties payable under deducted un-
the said act of the thirty-first year of his present majesty's reign, for or in der the said
respect of the salaries, fees, or wages of any office or employment, or for act, to be ac-
or in respect of any pension or gratuity out of any revenue belonging to counted for to
his majesty, shall be accounted for to such receiver or receivers, as shall be, the said re-
in pursuance of this present act, appointed by his majesty, his heirs, and ceivers, and
successors; and the accounts thereof shall be examined, audited, and pas- passed by
sed, by such receiver or receivers, or one of them, and not by the auditors them.
of the imprests, or the auditors of the court of exchequer.

Señ. 3. " And be it further enacted by the authority aforesaid, That if Disputes con-
any dispute shall arise whether the fees, salary, or wages of any office or cerning the
employment, or whether any pension or gratuity, be chargeable under charging any
the said act of the thirty-first year of his present majesty's reign, or under particular of-
this act, or touching the sum of money which ought to be stopped and fice or pension,
deducted out of such salary, fees, wages, pensions, or gratuities, such dis- or sums to be
putes shall be heard by the barons of the exchequer in *England*, if the deducted
office or employment in question is exercised, or the pension or gratuity thereof, .
is payable, in *England, Wales, or Berwick upon Tweed*; or by the barons to be heard
of the exchequer in *Scotland*, if the office or employment in question is ex- and determin-
ercised, or the pension or gratuity is payable, in that part of *Great Britain*; ed by the ba-
and such hearing is to be given on the complaint or representation laid in rons of the ex-
writing before the barons of the exchequer in *England* or *Scotland* respec- chequer in
tively, either by the party who shall think himself aggrieved, or by such England or
receiver or receivers who shall be appointed in pursuance of this act, in re- Scotland re-
spect of *England, Wales, or Berwick upon Tweed*, and by the receiver ge- spectively.
neral or receivers in *Scotland*, in respect of that part of the united king-
dom.

Señ. 4. " Provided always, That the complainant shall give a copy of Copy of the
his complaint or representation to the person or persons against whom the complaint to
same is made, within ten days after the same shall have been lodged with be given to
the said barons; and the said barons in *England* and *Scotland* respectively the person
shall hear and determine such disputes in a summary way, and their deter- complained
mination shall be binding without further appeal. against; and to
be determined
in a summary
way.

Señ. 5. " And whereas the profits of several offices and employments in
Great Britain arise in the whole, or in part, from perquisites which are due
and.

The perquisites of office to be ascertained by the commissioners of the land tax, distinct from the salary, and independent of any former valuation. Offices, &c.

and payable in the course of office ; and it is therefore, by the said act of the thirty-first year of his present majesty's reign, enacted, That such part of the sums of money thereby granted as are payable for or in respect of the profits of any office or employment in any part of *England, Wales, or Berwick upon Tweed*, which arise from such perquisites, shall be computed, raised, levied, and paid, according to the annual value at which such profits stood valued and rated to the last assessment to the land tax ; with a proviso, that such profits arising from such perquisites as aforesaid, should be deemed and taken to have been valued and rated in such last assessment to the land tax, at so much only as the entire sum at which any such office was valued and rated in the said assessment should exceed the amount of the salaries, wages, and fees, payable as aforesaid in respect of the same office : and whereas, for the better rating, ordering, levying, and collecting of the duty by the said act charged upon such perquisites of such of the said offices and employments as are in that part of *Great Britain* called *England, Wales, and Berwick upon Tweed*, the commissioners of the land tax for the time being are thereby authorized and required to ascertain, and set down in writing, the amount of the duty of one shilling in the pound, to be paid in pursuance of the said act by all commissioners and other officers, their clerks, agents, secondaries, substitutes, and other inferior ministers and persons whatsoever, having, using, or exercising, any of the said offices or employments, the salaries, wages, fees, and perquisites whereof, exceed the value of one hundred pounds *per annum*, within their respective hundreds, laths, wapentakes, rapes, wards, or other divisions, in proportion to the annual value at which the profits of such offices or employments respectively stood valued and rated in the last assessment to the land tax for the said respective hundreds and divisions respectively : and whereas it hath been found, that, in consequence of the said before recited limitations put by the said act upon the rating, valuing, and assessing, of the profits of offices and employments arising from perquisites due and payable in the course of office, the said offices and employments have not contributed in equal proportion with those whereof the profits arise from salaries, fees, and wages, payable by the crown ; be it therefore enacted by the authority aforesaid, That the commissioners of the land tax for the time being shall fix and ascertain, according to their best judgment and discretion, the sum total or amount of the perquisites arising from each and every office within their respective districts, distinct from the salary, fees, and wages, thereunto belonging, which are to be deducted under the said act, and independently of any former valuation or assessment of the same to the land tax ; and shall rate and assess all such of the said offices and employments, whereof the perquisites shall be found to exceed one hundred pounds a year, at one shilling for every twenty shillings arising by the said offices and employments.

where the perquisites exceed 100l. to be rated 1s. in the pound.

SECT. 6. " And, to the end that the duty of one shilling in the pound may be paid upon all offices and employments whereof the salary, fees, and

and wages, together with the perquisites, shall exceed one hundred pounds a year; it is hereby further enacted by the authority aforesaid, That the receiver or receivers to be appointed by virtue of this act, shall transmit to the commissioners of the land tax in every district where any office or employment is to be assessed, an account of all such offices and employments, whereof the fees, wages, and salaries, do not exceed one hundred pounds a year; and if the said commissioners of the land tax shall find the perquisites arising from the said office, with the salary, fees, and wages of the same, as certified by such receiver or receivers, to exceed together the amount of one hundred pounds a year, then the said commissioners are to rate and assess such office and employment, and to cause the duty of one shilling in the pound to be levied and collected thereon.

ther, shall be found to exceed 100l. per ann. are to be charged with the duty of 1s. in the pound,

Sec. 7. " Provided nevertheless, That in all future assessments to the land tax, the said offices and employments shall not be valued or assessed at any higher rates than those whereat the same offices and employments were respectively assessed and rated towards the land tax imposed by an act made in the thirty-first year of his present majesty's reign; any thing to the contrary thereof in any wise notwithstanding.

Sec. 8. " And, to prevent any doubts which might arise concerning the meaning of the word *perquisites*, in the said act, and in this present act mentioned, be it declared and enacted by the authority aforesaid, That the same shall for the purposes of the said act, and likewise of this present act, be construed, deemed, and taken, as and for such profits of offices and employments in *Great Britain*, as arise from fees established by custom or authority, and payable either by the crown, or the subjects, in consideration of business done, from time to time, in the course of executing such offices and employments.

Sec. 9. " And whereas in and by the said act it is provided, That no commissioner of the land tax in *England, Wales, or Berwick upon Tweed*, or commissioner of supply in *Scotland*, who shall be possessed of any office or employment subject and liable to the duty thereby imposed, shall sit, or act, or any ways interfere, in rating his own office or employment, but shall withdraw until the rating thereof be settled and determined by the rest of the commissioners then present: and whereas a doubt hath arisen whether any commissioner possessed of any such office or employment, can sit, or act, or any ways interfere, in the execution of the said act, in regard that the commissioners of the land tax are thereby constituted the assessors, and that the making and signing any assessment to be made in pursuance of the said act by any commissioner possessed of any office or employment, might be deemed and taken to be sitting, acting, or interfering, in the rating of his own office or employment, altho' such commissioner had withdrawn, until the rating of his office was settled and determined: be it therefore enacted by the authority aforesaid, That nothing in this or in the said in Commission-ers of the land tax not
Vol. III. N^o LXXVII. M m
such

liable to penalties for acting in the cases here mentioned, provided they withdraw during the rating of their respective employments.

such commissioner, for or in respect of his making or signing any assessment made, or to be made, in pursuance of the said in part recited act, or of this act; provided such commissioner shall have withdrawn, or shall withdraw, until the rating of his own office or employment shall have been, or shall be, settled or determined.

Charitable donations exempted from duties;

SecT. 10. " Provided also, That the duty of one shilling in the pound charged by the said act, made in the thirty-first year of his present majesty's reign upon pensions and gratuities, shall not, for the future, be charged on, or payable out of, such pensions or gratuities which his majesty, his heirs, and successors, shall be pleased to declare in the warrant, order, or other instrument, directing payment thereof, to be intended as charitable donations; any thing to the contrary thereof in any wise notwithstanding.

as also officers of the army and the hospitals;

SecT. 11. " Provided also, That nothing in the said act contained shall extend, or be construed to extend, to the charging of the said duty upon any military officers serving on the staff, or belonging to any of his majesty's garrisons, regiments, troops, companies, the royal hospital of *Chelsea*, or the hospitals of the army; any thing to the contrary thereof in any wise notwithstanding.

and the pensions, annuities, and rents, &c. granted in fee, or fee-tail, &c. by former kings and queens of England;

SecT. 12. " Provided always, and be it further enacted by the authority aforesaid, That the said recited act passed in the thirty-first year of his majesty's reign, or this act, or any thing therein or herein contained, shall not charge, or be construed, deemed, or taken to charge, any pension, annuity, yearly payment, rent, or sum, issuing out of, or charged upon, any revenues belonging to his majesty in *Great Britain*, that have been by his majesty's royal predecessors, kings or queens of *England*, or by act of parliament, granted unto any person or persons in fee or fee-tail, or till redeemed by payment of any sum or sums of money mentioned in any grant or act of parliament, with the said duty or payment in the said recited act of one shilling out of every twenty shillings thereof by the year, but that such pensions, annuities, yearly payments, rents, or sums, shall be acquitted and discharged, of, from, and against, the said duty, as if the said recited act had never been made; any thing therein or herein contained to the contrary notwithstanding.

and offices in both universities.

SecT. 13. " Provided always, and be it further enacted by the authority aforesaid, That nothing in this act contained shall extend, or be construed to extend, to charge any offices or employments in either of the two universities in that part of *Great Britain* called *England*, with the duty by this act imposed.

Pardon.

PARDON, (*pardonatio, venia,*) is the remitting or forgiving of a felony, or other offence committed against the king; and this is twofold, one *ex gratia regis*, the other *per course de la ley*, by course of the law. *Staundf. Pl. Cor. f. 47.* Pardon *ex gratia regis*, is that which the king, in some special regard of the person, or other circumstance, affordeth upon his absolute prerogative. Pardon *by the course of law*, is that which the law in equity affordeth for a light offence; as *homicide casual*, when one killeth a man, having no such meaning. *West. Symbol. part 2, tit. Indictments, sect. 46.*

By whom a pardon may be granted; and in what cases and for what offences it may be granted.

The power of pardoning offences is inseparably incident to the crown; and this high prerogative the king is intrusted with upon a special confidence, that he will spare those only whose case, could it have been foreseen, the law itself may be presumed willing to have excepted out of its general rules, which the wisdom of man cannot possibly make so perfect as to suit every particular case. *1 Show. 284.*

But it seems, that anciently the right of pardoning offences within certain districts was claimed by the lords marchers and others, who had *jura regalia* by ancient grants from the crown, or by prescription. But now, by the 27 *H. 8, cap. 24, sect. 1*, it is enacted, "That no person or persons, of what estate or degree soever they be, shall have power to pardon or remit any treasons or felonies whatsoever, nor any accessaries to the same, nor any outlawries for such offences, whether committed in *England* or *Wales*, or the marches of the same, but that the king shall have the whole and sole power and authority thereof, united and knit to the imperial crown of this realm, as of good right and equity it appertaineth. *Co. Lit. 114; 3 Inst. 233.*

It is laid down in general, that the king may pardon any offence whatever, whether against the common or statute law, so far as the public is concerned in it, after it is over, and consequently may prevent a popular action on a statute, by pardoning the offence before the suit is commenced; but it seems, that he cannot wholly pardon a public nuisance while it continues such, because such pardon would take away the only means of compelling a redress of it; yet it is said, that such a pardon will save the party from any fine to the time of the pardon. *Plew. 487; Keilw. 134; 12 Co. 29, 30; 3 Inst. 237; Vaugh. 333.*

M m 2

But

But it seems agreed, that the king can by no previous licence, pardon or dispensation make an offence punishable which is *malum in se*; as being either against the law of nature, or so far against the public good as to be indictable at common law; and that a grant of this kind, tending to encourage the doing of evil, which it is the chief end of government to prevent, is plainly against reason and the common good, and therefore void. *Dav. 75; 5 Co. 35; 12 Co. 29.*

And hence it hath been insisted, that the king's grant to the bishop of *Salisbury* and his successors, having the custody of a prison, that they shall be quiet from all escapes, which hath been adjudged to be a good grant, is not law; as being but a single instance, and contrary to this rule; because a grant of this kind, tending to make a gaoler less diligent in his duty, by taking off the legal punishment of his negligence, is plainly against the common good. *2 Hawk. P. C. 389; 3 H. 7, 15, pl. 30.*

But where a thing in its own nature lawful, is made unlawful by parliament, as the carrying bell-metal, &c. out of the realm, importing merchandizes in foreign ships, selling wines beyond a certain price, or without a licence, multiplying gold, &c. coining money of a base alloy, &c. it was formerly taken as a general rule, that the king might dispense with it, as to a particular time or place, or person, so far as the public was concerned in it; unless such dispensation could not but be attended with an inconvenience, as the introducing a monopoly; or frustrating the end for which the law was made; as the licensing a particular person to import foreign cards or wines, &c. in which case it was commonly taken to be void; also, where a statute gives a particular interest or right of action to the party grieved, as the statutes of mortmain, those against maintenance, forcible entries, carrying distresses out of the hundred, escapes, &c. it has been always agreed, that no charter from the king can bar the right of the party grounded on such statute; also where a statute is express, that the king's charter against the purport of it, though with the clause of *non obstante*, shall be void; it seems to have been always generally agreed, that regularly no such clause could dispense with it. *2 Hawk. P. C. 389, 390,* and several authorities there cited.

It seems to be agreed, that no dispensation of any statute, except the statutes of mortmain, was of any force, without a clause of *non obstante*; neither is such clause of any effect at this day, for it is declared and enacted by *1 W. & M. sess. 2, cap. 2*, That no dispensation by *non obstante* of or to any statute, or any part thereof, be allowed; but that the same shall be held void, except a dispensation be allowed in such statute; but it is provided, that no charter, grant, or pardon, granted before *23d of October 1699*, shall be any ways invalidated by that act, but that the same shall be and remain of the same force, and no other, as if the said act had never been made. *2 Hawk. P. C. 391.*

The king can by no charter whatsoever bar any right of entry or action, or any legal interest or benefit before vested in the subject; and therefore it seems clear, that he cannot bar any action on a statute by the party grieved,

grieved, nor even a popular action commenced before his pardon, nor a recognizance for the peace before it is forfeited. *Plow.* 487. *2 Roll. Abr.* 178. *Cro. Car.* 199. *Keilw.* 134.

Neither can the king pardon an appeal, except only where it is carried on at his suit, after a nonsuit; and therefore if a person attainted, on an appeal carried on at the suit of the party, get the king's pardon, he must sue a *scire facias* against the appellant before the pardon shall be allowed. *2 Hawk, P. C.* 392.

And if the appellant appear on the *scire facias*, he may pray execution notwithstanding the pardon; but if the sheriff return a *scire feci*, or two *nilis*, and the appellant appear not on demand; or if he return the appellant dead, the appellee shall be discharged; but some have holden, that in this last case a *scire facias* shall go against the heirs of the deceased. *2 Hawk, P. C.* 392.

But there is no need of any *scire facias* against the lord by escheat, because the pardon no way tends to reverse the attainder whereon the title of escheat is founded. *2 Hawk. P. C.* 393.

If several persons be outlawed on an appeal, and one get his pardon allowed on the non-appearance of the appellant, on a *scire facias*, it seems that the rest can take no advantage thereof, but must sue their *scire facias*, &c. in the same manner as if there had been no such default. *2 Hawk. P. C.* 393.

It hath been strongly holden, that the king may pardon the burning of the hand on a conviction of manslaughter on an appeal, as being no part of the judgment at the suit of the party, but collateral and exemplary punishment inflicted by the statute; and intended only by way of satisfaction to the public justice, like the finding of sureties by one convicted on the statute against trespass in parks. But for this see *2 Hawk. P. C.* 393.

A pardon will not only discharge any suit in the spiritual court *ex officio*, but also any suit in such court *ad instantiam partis pro reformatione morum*, or *salute animæ*, as for defamation or laying violent hands on a clerk, &c. and if the time, to which the pardon has relation, be prior to the award of the costs to the party, or as it is generally holden, if it be subsequent to the award, but prior to the taxation, it shall discharge them, but not if it be subsequent to the taxation; and the same rule holds as to costs taxed to the party grieved on a contempt in a court of equity; but *quære* as to costs taxed by the prothonotary on an attachment; for they are not given by the court of course, but the offender submits only to pay them by way of composition. *5 Co.* 51. *Latch.* 190. *Cro. Eliz.* 684. *Hob.* 81. *Cro. Jac.* 335. *2 Hawk. P. C.* 394.

If a person be imprisoned on an *excommunicato capiendo* for non-payment of costs, and the king pardons all contempts, it is said, that he shall be discharged without any *scire facias* against the party, and that the party must begin anew to compel a payment of the costs; because the imprisonment was grounded on the contempt, which is wholly pardoned. *1 Jon.* 227. *2 Roll. Abr.* 172. *Cro. Jac.* 159. *8 Co.* 68, 69.

Buc.

But no pardon will discharge a suit in the spiritual court, any more than in a temporal, for a matter of interest or property in the plaintiff; as for tithes, legacies, matrimonial contracts and such like; also it is agreed, that after costs are taxed in a suit in such court at the prosecution of the party, whether for a matter of private interest, or *pro reformatione morum*, or *pro salute animæ*, or for defamation, &c. they shall not be discharged by a subsequent pardon. 5 Co. 51. Latch. 190. Cro Car. 46-7.

If the offence be pardoned after costs taxed, and then the defendant appeals, and the superior court gives new costs for or against him, such costs shall not be avoided; because the costs in the first suit being taxed before the pardon, and therefore not avoided by it, the appeal was proper for determining whether they were well given or not, and consequently costs were as properly given on such appeal as in any other case; but if the offence be pardoned, hanging an appeal, and the pardon relate to a time precedent to the award of the costs, and then the appellant desert his appeal, and the court award costs against him in respect of such desertion, it seems that he may have a prohibition; because the pardon, having discharged the costs of the first suit, made the appeal to be of no purpose. 2 Roll. Abr. 304. Ney 85. Latch 155.

By the 12 & 13 W. 3, cap. 2, "No pardon under the great seal shall be pleaded to an impeachment by the commons in parliament.

STAT. 27 Ed. 3, ft. 2, c. 2, [A. D. 1353, intituled] "In a pardon of felony the suggestions and suggestor's name shall be comprised."

A pardon
granted upon
a false sugges-
tion shall be
disallowed.
Rast. 455.

"Item, because our lord the king hath often granted charters of pardon of felonies upon feigned and untrue suggestions of divers people, whereof much evil hath chanced in times past; (2) and for to eschue such evil, it is accorded and assented by our said lord the king, and all the said council, that from henceforth in every charter of pardon of felony, which shall be granted at any man's suggestion, the said suggestion, and the name of him that maketh the suggestion, shall be comprised in the same charter; (3) and if after the same suggestion be found untrue, the charter shall be disallowed and holden for none: (4) and the justices before whom such charters shall be alledged, shall enquire of the same suggestion, and that as well of charters granted before this time, as of charters which shall be granted in time to come; and if they find them untrue, then they shall disallow the charters so alledged, and shall moreover do as the law demandeth."

STAT. 13 Ric. 2, ft. 2, c. 1, [A. D. 1389, intituled] "In a pardon of murder, treason, or rape, the offence committed shall be specified. The forfeiture of him at whose suit such a pardon is obtained."

"Our lord the king, at his parliament holden at Westminster the Monday next after the feast of St. Hillary, the thirteenth year of his reign, hearing the grievous complaint of his said commons in the same parliament, of the

outrageous mischiefs and damages which have happened to his said realm, for that treasons, murders, and rapes of women be commonly done and committed, and the more because charters of pardon have been easily granted in such cases; (2) the said commons requested our lord the king, that such charters might not be granted; to whom the king answered, That he will save his liberty and regality, as his progenitors have done heretofore; (3) but to nourish the more quietness and peace within his realm, by the assent of the great men and nobles, being in the same parliament, he hath granted, That no charter of pardon from henceforth shall be allowed before any justice for murder, or for the death of a man slain by await, assault, or malice prepensed, treason, or rape of a woman, unless the same murder, death of the man slain by await, assault, or malice prepensed, treason, or rape of a woman, be specified in the same charter: (4) And if a charter of the death of a man be alledged before any justices, Kelyng, 125. Bro. Charter 10. Plow. 401. in which charter it is not specified, that he of whose death any such is arraigned, was murdered or slain by await, assault, or malice prepensed, the same justices shall inquire, by a good inquest, of the *visne* where the dead was slain, if he were murdered or slain by await, assault, or malice prepensed, and if they find that he was murdered, or slain by await, assault, or malice prepensed, the charter shall be disallowed, and further it shall be done as the law commandeth. (5) And if any be a suiter to the king Explained by 16 R. 2, c. 6. for a charter of pardon for murder, death of a man slain by await, assault, or malice prepensed, treason, or rape of a woman, if the chamberlain indorse, or cause to be indorsed such bill, he shall set the name of him that maketh suit for such charter upon the same bill, upon pain of one thousand marks, and if the under-chamberlain indorse such bill, he shall do likewise, upon pain of five hundred marks; (6) and that none other than the chamberlain, or under-chamberlain indorse, nor cause to be indorsed any such bill, upon pain of one thousand marks; (7) and that such bill be sent and directed to the keeper of the privy-seal; (8) and that no warrant of the privy-seal be made to have such charter, unless the keeper of the privy-seal have such bill indorsed or signed by the chamberlain or under-chamberlain, as afore is said. (9) And that no charter of pardon, of treason, nor of other felony, pass the chancery without warrant of the privy-seal, but in case where the chancellor may grant it of his office, without speaking thereof to the king. (10) And if he, at whose suit any charter of pardon for murder, death of a man slain by await, assault, or malice prepensed, treason, or rape of a woman, be granted, be an archbishop or duke, he shall pay to the king one thousand pounds; and if he be a bishop or earl, he shall pay to the king one thousand marks; and if he be an abbot or prior, baron or baronet, he shall pay five hundred marks; and if he be a clerk, batchelor, or other of less estate, of whatsoever condition that he be, he shall pay to the king two hundred marks, and have one year's imprisonment."

No pardon of treason or felony shall pass without warrant of the privy seal.

STAT. 16 Ric. 2, *stat. 2, c. 1*, [*A. D. 1392; intituled*] "A repeal of part of the statute of 13 R. 2, *stat. 2, c. 1*, touching his forfeiture that obtaineth a pardon."

In a pardon of murder, treason, or rape, the offence shall be comprised.

Item, whereas in an article of a statute made in the parliament holden at *Westminster*, the *Monday* next after the feast of *St. Hilary*, the thirteenth year of the king that now is, it was ordained and granted, that no charter of pardon from thence should be allowed before any justices for murder, death of a man slain by await, assault, or malice prepensed, treason, or rape of a woman, if it were not specified in the same charter. (2) And if any charter of the death of man were alledged before any justices, in which charter was not specified, that he of whose death any such was arraigned, was murdered, or slain by await, assault, or malice prepensed, the justices should inquire, by a good inquest of the *visue* where the dead person was slain, if he were murdered or slain by await, assault, or malice prepensed; and if they should find that he was murdered or slain by await, assault, or malice prepensed, the charter should be disallowed, and moreover done as the law should require; which things our lord the king doth will and grant, that they shall be firmly holden and kept. (3) And moreover, by the assent of the lords in this present parliament, and at the prayer of the commons, he hath ordained and granted, that the residue of the said article shall be wholly out, repealed, and annulled; that is to say, if any sue to the king for a charter of pardon for murder, death of man slain by await, assault, or malice prepensed, or rape of a woman, if the chamberlain indorse, or cause to be indorsed, such bill, he shall put the name of him that maketh suit for such a charter upon the same bill, upon pain of a thousand marks; and if the under-chamberlain indorse such bill, he shall do likewise, upon pain of five hundred marks. (4) And that none other but the chamberlain, or under-chamberlain, shall indorse, or cause to be indorsed, any such bill, upon pain of a thousand marks. (5) And that no warrant of the privy-seal shall be made to have a charter, except the keeper of the privy-seal have such bill indorsed or signed by the chamberlain, or under-chamberlain, as afore. (6) And that no charter of pardon of treason, or of other felony, shall pass the chancery, without warrant of the privy-seal, but in case where the chancellor may grant it by his office, without speaking thereof to the king. (7) And that he, at whose suit any charter of pardon for murder, death of man slain by await, assault, or malice prepensed, treason, or rape of a woman, shall be granted, if he were an archbishop or a duke, he shall pay to the king one thousand pounds; if he were a bishop or an earl, he shall pay to the king one thousand marks; and if he were an abbot, prior, baron, or baronet, he shall pay to the king five hundred marks; and if he were a clerk, batchelor, or other of less estate, of what condition that he be, he shall pay to the king two hundred marks, and shall have a year's imprisonment; (8) because that the said commons of the realm sithence have perceived great grievance of this ordinance aforesaid, for that many people

people for malice have indicted divers persons of murder, death of a man slain by await, assault, and malice prepened, and treason, where in truth there was no such cause, to the intent that no man should be bold to sue to the king our lord for such charter."

STAT. 5 Will. & Ma. c. 13, [A. D. 1694, intituled] "An act to repeal the statute made in the tenth year of king *Edward* the Third, for finding sureties for the good abearing, by him or her, that hath a pardon of felony."

"Whereas by one act made at the parliament holden in the tenth year ^{10 Ed. 3, stat.} of the reign of king *Edward* the Third, it was amongst other things ^{1, c. 3.} enacted, That in case the king should grant any charters of pardon, of manslaughter, robbery, felonies, and other trespasses against the peace, that, within three months after the making the same, they that should have the said charters, should come and find (before the sheriffs and coroners of the counties where the felonies were done) six good and sufficient mainpernors, for whom the said sheriffs and coroners would answer, that they from thenceforth should bear themselves well and lawfully; and that the mainprizes should be sealed with their seals, and returned into chancery within three weeks after the end of the said three months; and that if they that should have such charters, would in time to come aid themselves thereby, and should not find such mainprizes, or after such mainprize found, should bear themselves otherwise against the peace than they ought, their charters should be holden for none, which statute had been found very inconvenient, in relation to divers persons, who have been esteemed fit objects of mercy; and therefore the said statute hath been seldom put in practice, but for the most part hath been dispensed withal in the charters of pardons that were granted in former reigns: and forasmuch as by one act made in the first year of their now majesties reign, ^{1 W. & M. II.} intituled, *An act for declaring the rights and liberties of the subject*, and ^{2, c. 2.} settling the succession of the crown, it was enacted, That from and after that session of parliament, no dispensation by *non obstante* of or to any statute or any part thereof should be allowed, but that the same should be held void and of none effect; whereby divers of their majesties subjects are rendred less capable of their majesties mercy than before, it being very difficult, if not impossible, to find six substantial persons, who will adventure to be bound for the good behaviour of any person needing a pardon during his life:

SECT. 2. "Be it therefore enacted by the king's and queen's most excellent majesties, by and with the advice and consent of the lords spiritual and temporal, and commons, in parliament assembled, and by the authority of the same, That the said act made in the tenth year of king *Edward* ^{10 Ed. 3, stat.} the Third, and every article and clause therein, shall be and are repealed ^{1, c. 3, re-} and annulled, and are hereby declared to be repealed and annulled, to ^{pealed. Per-} all intents and purposes whatsoever. Provided nevertheless, and be it ^{sons pardoned,} enacted by the authority aforesaid, That if any charter of pardon be ^{even feme co-} pleaded ^{verts and in-} by ^{fants, to give}

security for
good behavi-
our for 7 years.

by any person, for any felony, the justices, before whom such pardon shall be pleaded, may at their discretion remand or commit such person to prison, there to remain until he or she shall enter into a recognizance, with two sufficient sureties, for his or her being of the good behaviour for any time, not exceeding seven years. Provided, That if any such charter of pardon be pleaded by a feme covert or infant, such feme covert or infant may find two sufficient sureties, who shall enter into a recognizance for him or her being of the good behaviour as is aforesaid."

The last act for a general and free pardon, was 20 Geo. 2, c. 52, which it is not now necessary to insert in this work.

Parliament.

PARLIAMENT, (*Parliamentum*,) is deduced from the *French*, viz. *parler*, to speak, and *ment*, *mens*, the mind; and the writ which summons it, says, *Ad consulendum, &c. de arduis regni negotiis*. It is indeed a solemn conference of all the states of the kingdom summoned together by the king's only authority, to treat of the weighty affairs of the realm. The ancient *Britons* had no such assemblies; for *Tacitus* avers, That although *Olim regibus parebant, nunc per principes factionibus & studiis trahuntur; nec aliud adversus validissimas gentes pro nobis utilis quam quod in commune non consulunt; rarus, duabus tribusve civitatibus ad propulsandum commune periculum, conventus; ita dum singuli pugnant universi vincuntur*. That the *Saxons* had something like it, will appear from king *Ina's* laws, who flourished anno 712. *Consilio* (inquit) *& documento cenredi patris mei, Hedde & Erkenwoldi, episcoporum meorum, omniumq; aldermannorum meorum, & seniorum sapientium populi mei, magna etiam servorum Dei frequentia*. But to come a little nearer, *William the Conqueror* divided this land among his followers in such manner, that every one of them should hold their lands of him *in capite*; and they again distributed part thereof among their friends and servants, who for the same were bound to do them suit and service in their courts. The chief of these were called *Barons*, who thrice every year assembled at the king's court, viz. at *Christmas*, *Easter* and *Whitsuntide*; amongst whom the king was wont to come in his royal robes, and his crown on his head, to consult about the public affairs of the kingdom. But this ancient custom (say some) was changed by *Henry the First*, who in the 16th year of his reign summoned the *Commons* to the great council at *Salisbury*. But see Sir *Walter Raleigh*, in his book of the

Prærog. of Parliaments, and Cotton's Posthuma, fol. 15, and Co. 2 Inst. fol. 268. At this day it is the greatest assembly of the kingdom, consisting of the king and three estates of the realm, viz. the lords spiritual, the lords temporal, and the commons, for the debating of matters touching the commonwealth, especially the making and altering of laws. *Smith de Rep. Anglor. Lib. cap. 1 & 2, and Camden. Brit. pag. 112, concerning which, Co. on Lit. lib. 2, cap. 10, sect 164, and in the fourth part of his institutes saith, Si vetustatem species, est antiquissima, si dignitatem, est honoratissima; si jurisdictionem, est capacissima.* This in an ancient charter of king John was called *Commune Concilium Regni*—*Nullum scutagium vel auxilium ponam in regno nostro, nisi per commune concilium regni nostri.* But besides this supreme court, there are other inferior *parliaments*. The abbot of *Croyland* was wont to call a *parliament* of his monks, to consult about the affairs of his monastery. And at this day the societies of the two *Temples*, or inns of court, do call that assembly a *parliament*, wherein they consult of the common affairs of their several houses. *Cowell, edit. 1727.*

Of the original and antiquity of parliaments.

To trace out exactly the original and antiquity of the supreme court of parliament, whose transcendent jurisdiction, says my lord Coke, is such, that it maketh, enlargeth, and diminisheth, abrogateth, repealeth and reviveth laws, statutes, acts and ordinances concerning matters ecclesiastical, capital, criminal, common, civil, martial, maritime, &c. And to point out the several alterations it met with, and how it came to be modelled in the shape we see it at this day, seems indeed, if not impossible, a work of the greatest difficulty; but this difficulty is not to be attributed to any peculiar defect in our constitution, but only to time, the loss and destruction of our records, especially in the barons wars; nor have the prejudices and different views, which conducted the pens of those who have wrote on this subject, helped a little to obscure and perplex the matter. *Co. Lit. 110. 4 Inst. 36.*

However, it appears by those lights which we have still remaining, and from the inquiries and reasonings of our best antiquaries, that there hath always been something of the nature of a parliamentary assembly, as ancient as any thing which we know of our constitution, in which the people shared with the prince in the legislative power: this assembly was sometimes called *Magnates regni, omnes regni nobiles, proceres & fideles regni, universitas regni, communitas regni, discretio totius regni, generale concilium regni*; &c. *Spelm. Gloss. in verb. Parl. Pryn's Right of the Commons 99.*

In the Saxon times, the general court of the whole kingdom was the *Wittingham-mote* or *Witena gemote*, to which were summoned the earls of each county, and the lords of each leet; and likewise representatives of towns, who were chosen by the burgesses of the town, and appeared on the king's summons; this court met once a year at least, and generally twice, about *Easter* and *Michaelmas*. *Wilk. LL. Saxon. 205. Lamb. Archaion. 57, 239, 245. Mirror, cap. 5, sect. 1.*

Upon the coming in of *William the Conqueror*, every person found in arms against him forfeited his whole estate, in which he placed his *Normans*; and he compelled all those, who were not in arms against him, to take out patents of their lands to hold of himself; and in order to this, he made a general survey of the whole kingdom, which was called *Domesday*, and changed the nature of the tenures, which in the *Saxon* times were allodial, into feudal, to be holden of himself by knight-service; and by this means made the property of their estates depend on their allegiance to him: and hence it is, that all lands are said to be holden mediately or immediately from the crown. See *Wright's Tenures*.

The baronies and earldoms were anciently created by granting so many knights fees, viz. If the grant consisted of 13, $\frac{1}{3}$ knights fees, the party was compellable to hold *per baroniam*; and he that had twenty knights fees, to hold as an earl; but when those grants came to be lost by time, they held both their honours and estates by the prescriptive right of possession; the earls and barons were wont to grant out lands to other vassals, to do certain duties, which depended on the bounty and agreement of the first grantor; and from hence came all the fruit of the feudal tenure, as wardship, marriage, relief, &c. But those, who held immediately from the crown, were called his tenants *in capite*, and did suit only to the king.

Also *William the Conqueror* erected a new court, called *Curia* or *Aula Regis*, composed of his principal officers of state; to these, when any matter of moment was in agitation, as levying a new war, raising an escuage, &c. were called most of the barons, and chief persons who held *in capite*, and they transacted all business civil and criminal, and also that relating to the revenue, and were the great court-baron of the kingdom; where every thing done therein, was said to be done *per concilium regni*; it was in the election of the king to summon which of his attendants he pleased to this court; and such attendance being deemed a burden in former days, the barons were seldom called, especially when they rose to that grandeur as to make such a concurrence formidable to the king. See *Maddox, cap. 2, 3*.

In this great assembly or parliament, it seems plain, that in the first reigns after the Conquest, the commons of *England* were no part; and therefore the tenants in ancient demesne, who used to maintain the king's table, and also those who held by burgage tenure, as by certain rent, letting out ships in the navy, &c. according to the nature of their patents, were wont, upon any extraordinary expedition, besides the duties of their tenure, to grant an aid to the king, which was demanded of them by the justices itinerant; and which, if they refused to pay, the king, at the end of the expedition might, with the advice and consent of his council, tallage them to a tenth of all their estate, but not to more; for none could be taxed at pleasure but villains, and those who held by base tenure. *Maddox 491*. See *Ryley 516*.

The great controversy, with respect to the original and antiquity of parliaments, relates chiefly to the power and first formation of a house of

of commons after the Conquest. Some have asserted that they have been always part of the ancient constitution, and that the commons of *England*, by their representatives, have always composed a part of that august assembly; others hold, that the house of commons was formed 49 *Hen. 3.*, when the king had given an overthrow, at the battle of *Evesham*, to *Simon Mountford*, earl of *Leicester*, and the barons that adhered to him; and to derogate from the power of the commons, and to lay aside parliaments, a notion was propagated in king *Charles* the Second's reign, that they first arose by the art and management of *Simon Mountford*, to be a balance to the crown and peerage; and that their first institution was the invention of a rebel to serve a particular purpose. *Sir Rob. Atkins's Power and Jurisdiction of Parliaments*, 14, and others. *Camden* in his *Britannia* 13.

But as neither of these accounts seem to be the true one, the most probable opinion is, that the house of commons was instituted by the crown, as a balance to the barons, who were grown very opulent and numerous, and as appears by their wars, very uneasy to the crown; hence we find, that upon the escheat of any barony for want of issue, or by forfeiture, the crown parcelled it out into smaller districts; and this begot the distinction between the *barones majores* and *barones minores*. These *barones minores* held by knights service, and being too numerous to be all called to parliament, were allowed to sit by representation. Hence we have the writ to choose *duos milites gladiis cinctos*; to these were added representatives of cities and ancient boroughs, who being equally concerned with the *barones minores* in all aids and taxes, it was reasonable they should share with them in those matters; and this policy was set on foot as a matter of the greatest service to the crown, both for the balancing of the peerage, and more conveniently taxing of the people. *Spelm. Gloss.* 67. *Seld. Tit. Hon.* 692.

As one of the principal reasons for establishing a house of commons was, for the more convenient taxing of the people; hence we find the true reason why all taxation begun in that house, and why the commons would never after suffer it to be altered; and the reason is, that being at first instructed by their principals, whom they represented, to give what each man thought he could bear; to vary from these instructions, or to suffer the superior peerage to alter it, would, as they rightly judged, be the highest breach of trust in them.

Hence also we find the true reason why the power of judicature was reserved to the lords house, for the *barones majores*, who constituted this house, were called to the ancient *Curia Regis*, and set there in their own right, as *pares curtis* to the king; and as this court had a jurisdiction of determining in the first instance, both in civil and criminal causes, especially those relating to great persons and the king's officers of state, as also by way of appeal from the justice of all other courts; so the lords continued to determine on petitions exhibited by private persons, or those exhibited by the house of commons, called impeachments, and were still the dernier resort to correct the errors of inferior judicatures. *Ryley Pla. Par.* 74, 156. *Hollis's Jud. of the Peers*, 84.

At.

At the first instituting a house of commons, the representatives of knights, citizens and burgesſes, were only looked upon as trustees to manage the affairs of their principals; and therefore in former days it was held reasonable, that they ſhould be recompenced by their principals, for the trouble and expence they were at in managing the truſt repoſed in them. Hence the fee of every knight of the ſhire was 4*s. per diem*, and that of a citizen or burgeſs 2*s. per diem*. 4 *luſt.* 46.

STAT. 7 & 8. *Will.* 3, c. 15. [*A. D.* 1696, *intituled.*] “An act for the continuing, meeting, and ſitting of a parliament, in caſe of the death or demife of his majeſty, his heirs, and ſucceſſors.”

Seſſ. 1. “Whereas this kingdom of England may be expoſed to great dangers, by the invaſion of foreigners, or by the traiteroſ conſpiracies of wicked and ill-diſpoſed perſons, whenever it ſhall pleaſe God to afflict theſe realms by the death of our gracious ſovereign king *William* (whom God long preſerve) or by the death of any of his heirs and ſucceſſors, before a parliament can be ſummoned and called by the next heir and ſucceſſor to the crown: for prevention whereof be it enacted by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and the commons, in this preſent parliament aſſembled, and by the authority of the ſame, That this preſent parliament, or any other parliament, which ſhall hereafter be ſummoned and called by his majeſty king *William*, his heirs, and ſucceſſors, ſhall not determine or be diſſolved by the death or demife of his ſaid majeſty, his heirs, and ſucceſſors; but ſuch parliament ſhall, and is hereby enacted to continue, and is hereby impowered and required immediately to meet, convene, and ſit, and to act, notwithstanding ſuch death or demife, for and during the time of ſix months, and no longer, unleſs the ſame ſhall be ſooner prorogued or diſſolved by ſuch perſon who ſhall be next heir to the crown of this realm of *England* in ſucceſſion, according to an act of parliament made in the firſt year of the reign of king *William* and queen *Mary*, intituled, *An act declaring the rights and liberties of the ſubject, and ſettling the ſucceſſion of the crown*: and if the ſaid parliament ſhall be ſo prorogued, then it ſhall meet and ſit on and upon the day unto which it ſhall be prorogued, and continue for the reſidue of the ſaid time of ſix months, unleſs ſooner prorogued or diſſolved, as aforeſaid.

Parliament to ſit for ſix months after the king's death, unleſs ſooner diſſolved by the ſucceſſor.

1 *W. & M.* ſſ.
2, c. 2.

In caſe of no parliament, the laſt preceding to act.

Act not to abridge the king's power to prorogue or diſſolve

Seſſ. 2. “And it is hereby further enacted by the authority aforeſaid, that in caſe there ſhall be no parliament in being, at the time of the death or demife of his majeſty, or any of his heirs, and ſucceſſors, then the laſt preceding parliament ſhall immediately convene and ſit, and is hereby impowered and required to act, as aforeſaid, to all intents and purpoſes, as if the ſaid parliament had never been diſſolved.

Seſſ. 3. “Provided always, and it is hereby declared, that nothing in this act contained ſhall extend, or be conſtrued to extend, to alter or abridge the power of the king, his heirs, and ſucceſſors, to prorogue or diſſolve parliaments, nor to repeal or make void one act of parliament made in the

the sixth and seventh years of the reign of his present majesty king ^{parliaments.}
William, intituled, *An act for the frequent meeting and calling of parliaments*, 6 & 7 W. 3.
 but that the said act shall continue in force in every thing that is not c. 2.
 contrary to, or inconsistent with the directions of this act."

STAT. 12 & 13 Will. 3, c. 3. [A. D. 1700, intituled,] "An act for preventing any inconveniencies that may happen by privilege of parliament."

SECT. 1. "For the preventing all delays the king or his subjects may receive in any of his courts of law or equity, and for their ease in the recovery of their rights and titles to any lands, tenements, or hereditaments, and their debts, or other dues, for which they have cause of suit or action: be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That from and after the four and twentieth day of *June*, one thousand seven hundred and one, any person and persons shall and may commence and prosecute any action or suit in any of his majesty's courts of record at *Westminster*, or high court of chancery, or court of exchequer, or the dutchy court of *Lancaster*, or in the court of admiralty, and in all causes matrimonial and testamentary in the court of the arches, the prerogative courts of *Canterbury* and *York*, and the delegates, and all courts of appeal, against any peer of this realm, or lord of parliament, or against any of the knights, citizens, and burgeses of the house of commons, for the time being, or against their or any of their menial or other servants, or any other person intituled to the privilege of parliament, at any time, from and immediately after the dissolution or prorogation of any parliament, until a new parliament shall meet, or the same be reassembled, and from and immediately after any adjournment of both houses of parliament, for above the space of fourteen days, until both houses shall meet or reassemble; and that the said respective courts shall and may, after such dissolution, prorogation, or adjournment, as aforesaid, proceed to give judgment, and to make final orders, decrees, and sentences, and award execution thereupon, any privilege of parliament to the contrary notwithstanding.

Action may be commenced against peer or member of parliament, &c. in the interval of parliament, &c.

and after prorogation, &c. court may give judgment.

SECT. 2. "Provided nevertheless, that this act shall not extend to subject the person of any of the knights, citizens, and burgeses of the house of commons, or any other person intituled to the privilege of parliament, to be arrested during the time of privilege: Nevertheless, if any person or persons, having cause of action or complaint against any peer of this realm, or lord of parliament, such person or persons, after any dissolution, prorogation, or adjournment, as aforesaid, or before any sessions of parliament, or meeting of both houses, as aforesaid, shall and may have such process out of his majesty's courts of king's bench, common pleas, and exchequer, against such peer or lord of parliament, as he or they might have had against him out of the time of privilege; and if any person

Person may have process against peer, &c. after dissolution.

son

son or persons, having cause of action against any of the said knights, citizens, or burgeses, or any other person intituled to privilege of parliament, after any dissolution, prorogation, or such adjournment, as aforesaid, or before any sessions of parliament, or meeting of both houses, as aforesaid, such person or persons shall and may prosecute such knight, citizen, or burges, or other person intituled to the privilege of parliament, in his majesty's courts of king's bench, common pleas, or exchequer, by summons, and distress infinite, or by original bill, and summons, attachment, and distress infinite thereupon to be issued out of any of the said courts of record, which the said respective courts are hereby impowered to issue against them, or any of them, until he or they shall enter a common appearance, or file common bail, to the plaintiff's action, according to the course of each respective court; and any person or persons, having cause of suit or complaint, may, in the times aforesaid, exhibit any bill or complaint, against any peer of this realm, or lord of parliament, or against any of the said knights, citizens, or burgeses, or other person intituled to the privilege of parliament, in the high court of chancery, court of exchequer, or dutchy court of *Lancaster*, and may proceed thereupon by letter or *subpœna* as is usual, and upon leaving a copy of the bill with the defendant, or at his house or lodging, or last place of abode, may proceed thereon; and for want of an appearance or answer, or for non-performance of any order or decree, or for breach thereof, may sequester the real and personal estate of the party, as is used and practised where the defendant is a peer of this realm; but shall not arrest or imprison the body of any of the said knights, citizens, and burgeses, or other privileged person, during the continuance of privilege of parliament.

and may exhibit bill against any peer or member, &c.
and sequester the party's estate, but not arrest his body.
Plaintiff prevented from prosecution by privilege of parliament, not to be barred by any statute of limitation, &c.

Señ. 3. "And be it enacted by the authority aforesaid, that where any plaintiff shall, by reason or occasion of privilege of parliament, be stayed or prevented from prosecuting any suit by him commenced, such plaintiff shall not be barred by any statute of limitation, or nonsuited, dismissed, nor his suit discontinued, for want of prosecution of the suit by him begun, but shall from time to time, upon the rising of the parliament, be at liberty to proceed to judgment and execution.

No action, &c. against the king's immediate debtor, &c.

Señ. 4. "And it is hereby enacted, that no action, suit, process, order, judgment, decree, or proceeding in law or equity against the king's original and immediate debtor, for the recovery or obtaining of any debt or duty originally and immediately due or payable unto his majesty, his heirs, or successors, or against any accountant, or person answerable or liable to render any account unto his majesty, his heirs, or successors, for any part or branch of any of his or their revenues, or other original and immediate debt or duty, or the execution of any such process, order, judgment, decree, or proceedings, shall be impeached, stayed, or delayed, by or under the colour or pretence of any privilege of parliament; yet so nevertheless, that the person or persons of any such debtor or accountant, or person answerable or liable to account, being a peer of this

shall be stayed by privilege of parliament,

but person not liable to be arrested, &c.

realm or lord of parliament, shall not be liable to be arrested or imprisoned, by or upon any such suit, order, judgment, decree, process, or proceedings

proceedings, or being a member of the house of commons, shall not, during the continuance of the privilege of parliament, be arrested or imprisoned, by or upon any such order, judgment, decree, process, or proceedings.

Seft. 5. “ Provided nevertheless, that neither this act, nor any thing therein contained, shall extend to give any jurisdiction, power, or authority, to any court, to hold plea in any real or mixt action, in any other manner than such court might have done before the making this act.” Proviso.

STAT. 9 Ann. c. 5. [A. D. 1710, intituled] “ An act for securing the freedom of parliaments, by the farther qualifying the members to sit in the house of commons.”

Seft. 1. “ For the better preserving the constitution and freedom of parliament, be it enacted and declared by the queen’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that from and after the determination of this present parliament, no person shall be capable to sit or vote as a member of the house of commons, for any county, city, borough, or cinque-port, within that part of *Great Britain* called *England*, the dominion of *Wales*, and town of *Berwick upon Tweed*, who shall not have an estate, freehold or copyhold, for his own life, or for some greater estate, either in law or equity, to and for his own use and benefit, of or in lands, tenements, or hereditaments, over and above what will satisfy and clear all incumbrances that may affect the same, lying or being within that part of *Great Britain* call *England*, the dominion of *Wales*, and town of *Berwick upon Tweed*, of the respective annual value hereafter limited, *videlicet*, the annual value of six hundred pounds, above reprises, for every knight of a shire: and the annual value of three hundred pounds above reprises, for every citizen, burgess, or baron of the cinque-ports; and that if any person, who shall be elected or returned to serve in any parliament, as a knight of a shire, or as a citizen, burgess, or baron of the cinque-ports, shall not, at the time of such election and return, be seized of, or entitled to such an estate, in lands, tenements, or hereditaments, as for such knight, or for such citizen, burgess, or baron respectively, is herein before required or limited, such election and return shall be void.”

No person shall be a member, who hath not an estate, &c.
clear from incumbrances, and lying in England, viz. Every knight of a shire 600l. a year.
Every citizen, &c. 300l. a year: any person returned, who hath not such an estate, the return shall be void.

Seft. 2. “ Provided always, that nothing in this act contained, shall extend to make the eldest son, or heir apparent, of any peer, or lord of parliament, or of any person qualified by this act to serve as knight of a shire, incapable of being elected and returned, and sitting and voting as a member of the house of commons in any parliament.”

This act not to extend to the eldest son of a peer, or of a person qualified to serve as a knight of a shire.

Seft. 3. “ Provided always, that nothing in this act contained shall extend, or be construed to extend to either of the universities in that part of *Great Britain* called *England*, but that they, and each of them may elect and return members to represent them in parliament, as heretofore

The universities may elect and return members as they formerly.

they have done; any thing herein contained to the contrary notwithstanding.

None to be qualified by virtue of any mortgage, unless the mortgagee have been in possession, 7 years before the election.

Every candidate, at the request of another candidate, or of two of the voters, shall take the following oath;

Sec. 4. " Provided always, and be it enacted by the authority aforesaid, That no person whatsoever shall be construed to be qualified to sit in the house of commons, within the meaning of this act, by virtue of any mortgage whatsoever, whereof the equity of redemption is in any other person or persons, unless the mortgagee shall have been in possession of the mortgaged premises, for the space of seven years before the time of his election; any thing herein contained to the contrary notwithstanding.

Sec. 5. " Provided always, and it is hereby enacted by the authority aforesaid, that every person (except as aforesaid) who from and after the determination of this present parliament, shall appear as a candidate, or shall, by himself or any others, be proposed to be elected to serve as a member of the house of commons, for any county, city, borough, or cinque-port in *England, Wales, or Berwick upon Tweed*, shall, and he is hereby enjoined and required, upon reasonable request to him to be made, (at the time of such election, or before the day to be prefixed in the writ of summons for the meeting of the parliament) by any other person who shall stand candidate at such election, or by any two or more persons, having right to vote at such election, take a corporal oath in the form, or to the effect following:

The oath.

I *A. B.* do swear, that I truly and *bona fide* have such an estate in law or equity, to and for my own use and benefit, of or in lands, tenements, or hereditaments, (over and above what will satisfy and clear all incumbrances that may affect the same) of the annual value of six hundred pounds, above reprises, as doth qualify me to be elected and returned to serve as a member for the county of _____ according to the tenor and true meaning of the act of parliament in that behalf; and that my said lands, tenements or hereditaments, are lying or being within the parish, township, or precinct of _____

Or, in the several parishes, townships, or precincts of _____ in the county of _____ *Or*, in the several counties of _____ (as the case may be).

If the candidate be for a city, &c. the oath shall relate only to 300*l. per ann.* *mutatis mutandis.*

The oath to be administered by the sheriff, &c. who shall within three months after the taking

Sec. 6. " And in case such candidate or person is to serve for any city, borough, or cinque-port, then the said oath shall relate only to the value of three hundred pounds *per annum*, and be taken to the same effect, (*mutatis mutandis*) as is hereby prescribed for the oath of a person to serve as a member for such county, as aforesaid.

Sec. 7. " And it is hereby enacted, that the respective oaths aforesaid shall and may be administered by the sheriff, or under-sheriff, for any such county, as aforesaid, or by the mayor, bailiff, or other officer or officers for any city, borough, or port, to whom it shall appertain to take the poll, or make the return at such election for the same county, borough, or port respectively, or by any two or more justices of the peace within *England, Wales, and Berwick upon Tweed*: and the said sheriff, mayor,

mayor, bailiff, or other officers, and the said justices of the peace respectively, who shall administer the said oaths, are hereby required to certify the taking thereof into her majesty's high court of chancery, or the queen's bench, within three months after the taking the same, under the penalty of forfeiting the sum of one hundred pounds, to wit, one moiety thereof to the queen, and the other moiety thereof to such person or persons as will sue for the same, to be recovered with full costs of suit by action of debt, bill, plaint, or information, in any of her majesty's courts of record at *Westminster*; and if any of the said candidates or persons proposed to be elected, as aforesaid, shall wilfully refuse, upon reasonable request to be made at the time of the election, or at any time before the day upon which such parliament by the writ of summons is to meet, to take the oath hereby required, then the election and return of such candidate or person shall be void.

thereof, certify the same into the queen's bench or chancery, or forfeit 100l. one moiety to the queen, the other to him who will sue, &c. with full costs of suit. Candidate refusing to take the oath, his election to be void.

Stat. 8. "And it is hereby enacted, that no fee or reward shall be taken, for administering any such oath, or making, receiving, or filing the certificate thereof, except one shilling for administering the oath, and two shillings for making the certificate, and two shillings for receiving and filing the same, under the penalty of twenty pounds, to be forfeited by the offender, and to be recovered and divided, as aforesaid."

is only for administering the oath, 2s. for certificate, and 2s. for filing; penalty 20l.

STAT. 10 Ann. c. 23. [A. D. 1711, intituled] "An act for the more effectual preventing fraudulent conveyances, in order to multiply votes for electing knights of shires to serve in parliament."

Stat. 1. "Whereas by an act of parliament made in the seventh year of 7 & 8 W. 3 the reign of his late majesty king *William* the third, [intituled, *An act for the further regulating elections of members to serve in parliament, and for the preventing irregular proceedings of sheriffs and other officers in the electing and returning such members,*] It is, amongst other things, enacted, That all conveyances of any messuages, lands, tenements, or hereditaments, in any county, city, borough, town corporate, port or place, in order to multiply voices, or to split and divide the interest in any houses or lands amongst several persons to enable them to vote at elections of members to serve in parliament, shall be void and of none effect; and that no more than one single voice shall be admitted for one and the same house and tenement: And whereas (notwithstanding this provision to the contrary) many fraudulent and scandalous practices have been used of late to create and multiply votes at the election of knights of the shire to serve in parliament, to the great abuse of the antient law and custom of that part of *Great Britain* called *England*, to the great injury of those persons who have just right to elect, and in prejudice of the freedom of such elections; therefore, for the more effectual preventing of such undue practices, Be it enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, That all estates and conveyances whatsoever made to any person or persons in any fraudulent or collusive manner,

All conveyances fraudulent made to qualify any person to vote (subject to

conditions to defeat the same) shall be discharged of such conditions, &c.

on purpose to qualify him or them to give his or their vote or votes at such elections of knights of the shire (subject nevertheless to conditions or agreements to defeat or determine such estate, or to reconvey the same) shall be deemed and taken, against those persons who executed the same, as free and absolute, and be holden and enjoyed by all and every such person or persons to whom such conveyance shall be made, as aforesaid, freely and absolutely acquitted, exonerated, and discharged, of and from all manner of trusts, conditions, clauses of re-entry, powers of revocation, provisos of redemption, or other defeazances whatsoever, between or with the said

And all bonds, &c. for defeating such estate shall be void.

parties, or any other person or persons in trust for them; and that all bonds, covenants, collateral or other securities, contracts or agreements, between or with the said parties, or any other person or persons in trust for them, or any of them, for the redeeming, revoking, or defeating such estate or estates, or for the restoring, or reconveying thereof, or any part thereof, to any person or persons who made or executed such conveyance, or to any other person or persons in trust for them, or any of them, shall be null and

Persons making, &c. such conveyance, or voting by colour thereof, shall, for every such offence, forfeit 40l.

void to all intents and purposes whatsoever; and that every person who shall make and execute such conveyance or conveyances, as aforesaid, or being privy to such purpose, shall devise or prepare the same, and every person, who by colour thereof, shall give any vote at any election of any knight or knights of a shire to serve in parliament, shall, for every such conveyance so made, or vote so created or given, forfeit the sum of forty pounds to any person who shall sue for the same, to be recovered, together with full costs of suit, by action of debt, bill, plaint, or information, in any of her majesty's courts of record at *Westminster*, wherein no essoin, privilege, protection, wager of law, or more than one imparlance shall be admitted or allowed.

After 1 May, 1712, no persons shall vote for a knight of a shire, in right of lands which have not been charged to public taxes, &c. and for which such person has not received the rents for one year before the election; unless such lands came to him within that time by descent, &c. This clause explained 12 Ann. Stat. 1, c. 5, on pe-

Seft. 2. " And be it further enacted by the authority aforesaid, That from and after the first day of *May*, which shall be in the year of our Lord one thousand seven hundred and twelve, no person shall vote for the electing of any knight of a shire within that part of *Great Britain* called *England*, in respect or in right of any lands or tenements which have not been charged or assessed to the publick taxes, church rates, and parish duties, in such proportion as other lands or tenements of forty shillings *per annum*, within the same parish or township where the same shall lie or be, are usually charged, and for which such person shall not have received the rents or profits, or be entitled to have received the same, to the full value of forty shillings or more, to his own use, for one year before such election, unless such lands or tenements came to such person within the time aforesaid by descent, marriage, marriage-settlement, devise, or presentation to some benefice in the church, or by promotion to some office unto which such freehold is affixed; and if any person shall vote in any such election, contrary to the true intent and meaning hereof, he shall, for every such offence, forfeit the sum of forty pounds; one moiety whereof to the poor of the parish or parishes where the lands or tenements lie, for which such person shall vote, and the other moiety to the person or persons who shall sue for the same, to be recovered by action of debt, bill, plaint, or information,

mation, in any of her majesty's courts of record at *Westminster*, wherein no nalty of 40 l. one moiety to the poor, the other to the prosecutor.

Sett. 3. " And whereas by the above recited act, it is also further enacted, That upon every election to be made of any knight or knights of the shire to serve in parliament, every freeholder, before he is admitted to poll at the same election, shall (if required by the candidates, or any of them) first take the oath therein after mentioned; Be it enacted by the authority aforesaid, That the said act, as to so much only as concerns the said oath, shall be and is hereby repealed. The oath required by the act 7 W. 3. c. 25, repealed.

Sett. 4. " And be it further enacted by the authority aforesaid, That upon every election to be made of any knight or knights of a shire within that part of *Great Britain* called *England*, to serve in parliament, every freeholder, before he is admitted to poll at the same election, shall (if required by the candidates, or any of them, or any other person, having a right to vote at such election) first take the oath following: viz. Freeholders to be sworn;

YOU shall swear, That you are a freeholder in the county of Their oath.
and have freehold lands or hereditaments lying or being at
in the county of of the yearly value of forty shillings above all
charges payable out of the same; and that such freehold estate hath not been
made or granted to you fraudulently, on purpose to qualify you to give your vote;
and that the place of your abode is at in and that you
have not been polled before at this election.

Which oath the sheriff, by himself, his under-sheriff, or such sworn clerk or clerks (as shall be by him appointed for the taking the poll pursuant to the said recited act) is hereby required to administer; and in any freeholder, or other person, taking the said oath hereby appointed, shall thereby commit wilful and corrupt perjury, and be thereof convicted, or if any person do unlawfully and corruptly procure or suborn any freeholder, or other person, to take the said oath, in order to be polled, whereby he shall commit such wilful and corrupt perjury, and shall be thereof convicted, he and they, for every such offence, shall incur the like pains and penalties as are in and by one act of parliament made in the fifth year of the reign of the late queen *Elizabeth*, [intituled, *An act for punishment of such persons as shall procure or commit any wilful perjury,*] enacted against all such who shall commit wilful perjury, or suborn or procure any person to commit any unlawful or corrupt perjury contrary to the said act. To be administered by the sheriff, &c. freeholder committing wilful perjury, or any person suborning him so to do, shall incur the penalties of 5 Eliz. c. 9.

Sett. 5. " And the better to detect and punish any offenders against this act, Be it enacted by the authority aforesaid, That in taking the poll the sheriff, or his under-sheriff, and clerks, shall enter not only the place of the elector's freehold, but also the place of his abode, as he shall declare the same at the time of giving his vote, and shall also make or enter *jurat* against the name of every such voter who shall be tendred and take the oath hereby required; and that the said sheriff, or returning officer, shall, upon oath to The elector's name, &c. to be entered. Poll-books to be delivered upon oath to

the clerk of the peace, to be kept among the records of the sessions. shall, within the space of twenty days next after such election, faithfully deliver over upon oath (which oath the two next justices of the peace, one of whom to be of the *quorum*, are hereby enabled and required to administer) unto the clerk of the peace of the same county, all the poll-books of such respective elections, without any imbezilment or alteration; and in such counties where there are more than one clerk of the peace, then the original poll-books to one of such clerks of the peace, and attested copies thereof to the rest, to be carefully kept and preserved among the records of the sessions of the peace of and for the said county.

Sheriff of Yorkshire to appoint seven tables for taking the poll, at the costs of the candidates. *Seet. 6.* " And be it further enacted by the authority aforesaid, That the sheriff of the county of *York*, for the time being, shall be and is hereby required to appoint seven convenient tables or places for taking the poll of the said county upon any new election of a knight or knights of the shire for the said county, at the proper costs and charges of the candidates for the same, to continue till the poll be concluded.

Sheriff of Cheshire to do the like. *Seet. 7.* " And be it further enacted by the authority aforesaid, That the sheriff of the county palatine of *Chester*, for the time being, against every election of a knight or knights of the shire to serve in parliament for the said county, shall and is hereby required to cause seven convenient tables or places, and no more, to be made at the costs and charges of the candidates within the shire-hall of the said county, for taking the poll at such elections (that is to say) two at the upper end, two at each side, and one at the lower end of the said hall, and shall at such place take the poll at such elections till the same is concluded.

Quakers declaring the effect of the oath on their affirmation, as directed by 7 & 8 W. 3. c. 34, shall be admitted to vote. *Seet. 8.* " Provided always, and be it enacted by the authority aforesaid, That if any person being a quaker, during the continuance of an act passed in the seventh year of his late majesty's reign, [intituled, *An act that the solemn affirmation and declaration of the people called quakers, shall be accepted instead of an oath in the usual form,*] shall upon such election, as aforesaid, if required by the candidates, or any of them, declare the effect of the said oath upon his solemn affirmation, in such manner and form as is directed by the said act of parliament made in the seventh year of the reign of his late majesty king *William* the third, [intituled, *An act that the solemn affirmation and declaration of the people called quakers, shall be accepted instead of an oath in the usual form,*] every such quaker shall be capable and admitted to give his vote for the election of any such member, as aforesaid, to serve in the house of commons within that part of *Great Britain* called *England*; and every sheriff, by himself, or such his proper officer, as aforesaid, is hereby authorized and required to accept such affirmation instead of the said oath, and shall also make or enter *affirmat* against the name of every such quaker; and in case any such quaker shall be convicted wilfully, falsely and corruptly to have affirmed or declared any matter or thing, which, if the same had been in the usual form, would have amounted to wilful and corrupt perjury, every such quaker so offending, shall incur the same penalties and forfeitures as are herein before enacted against persons convicted of wilful and corrupt perjury."

And affirming any thing false shall incur the penalties before enacted against perjury.

STAT. 2 Geo. 2, c. 24. [A. D. 1729, intituled] “ An act for the more effectual preventing bribery and corruption, in the elections of members to serve in parliament.”

SECT. 1. “ Whereas it is found by experience, that the laws already in being have not been sufficient to prevent corrupt and illegal practices in the election of members to serve in parliament; for remedy therefore of so great an evil, and to the end that all elections of members to parliament may hereafter be freely and indifferently made, without charge or expence, be it enacted by the king’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That from and after the twenty-fourth day of June, in the year of our Lord one thousand seven hundred and twenty-nine, upon every election of any member or members to serve for the commons in parliament, every freeholder, citizen, freeman, burgess, or person having or claiming to have a right to vote, or be polled at such election, shall, before he is admitted to poll at the same election, take the following oath (or, being one of the people called quakers, shall make the solemn affirmation appointed for quakers) in case the same shall be demanded by either of the candidates, or any two of the electors; that is to say,

Electors of parliament men to take the following oath, if demanded.

I A. B. *do swear* (or, being one of the people called quakers, *I A. B. do solemnly affirm*) *I have not received, or had by myself, or any person whatsoever in trust for me, or for my use and benefit, directly or indirectly, any sum or sums of money, office, place, or employment, gift, or reward, or any promise or security for any money, office, employment, or gift, in order to give my vote at this election, and that I have not before been polled at this election.*

Electors oath.

Which oath or affirmation the officer or officers presiding, or taking the poll at such election, is and are hereby impowered and required to administer *gratis*, if demanded, as aforesaid, upon pain to forfeit the sum of fifty pounds of lawful money of Great Britain, to any person that shall sue for the same, to be recovered, together with full costs of suit, by action of debt, bill, plaint, or information, in any of his majesty’s courts of record at Westminster, wherein no essoin, protection, wager of law, or more than one imparlance, shall be admitted or allowed; and if the said offence shall be committed in that part of Great Britain called Scotland, then to be recovered, together with full costs of suit, by summary action, or complaint before the court of session, or by prosecution before the court of judicatory there, for every neglect or refusal so to do; and no person shall be admitted to poll, till he has taken and repeated the said oath, in a publick manner, in case the same shall be demanded, as aforesaid, before the returning officer, or such others as shall be legally deputed by him.

Presiding officer to administer it, on forfeiture of 50l.

SECT. 2. “ And be it further enacted, That if any sheriff, mayor, bailiff, or other returning officer, shall admit any person to be polled, without taking

Sheriff or other returning officer admitting such

ting any to be such oath or affirmation, if demanded, as aforesaid, such returning officer shall forfeit the sum of one hundred pounds, to be recovered in manner aforesaid, together with full costs of suit; and that if any person shall vote or poll at such election, without having first taken the oath, or, if a quaker, having made his affirmation, as aforesaid, if demanded, such person shall incur the same penalty, which the officer is subject to for the offence above mentioned.

Returning of- *Sec. 3.* “ And be it further enacted by the authority aforesaid, That ficer, after every sheriff, mayor, bailiff, headborough, or other person, being the reading the writ, to take the following oath, returning officer of any member to serve in parliament, shall, immediately after the reading of the writ or precept for the election of such member, take and subscribe the following oath : *videlicet*,

I A. B. *do solemnly swear, That I have not, directly nor indirectly, received any sum or sums of money, office, place, or employment, gratuity, or reward, or any bond, bill, or note, or any promise or gratuity whatsoever, either by myself, or any other person to my use, or benefit, or advantage, for making any return at the present election of members to serve in parliament; and that I will return such person or persons, as shall, to the best of my judgment, appear to me to have the legal majority of votes.*”

Which oath any justice or justices of the peace of the said county, city, corporation, or borough, where such election shall be made, or, in his or their absence, any three of the electors, are hereby required and authorized to administer; and such oath, so taken, shall be entred among the records of the sessions of such county, city, corporation, and borough, as aforesaid.

What votes shall be deemed legal. *Sec. 4.* “ And be it enacted by the authority aforesaid, That such votes shall be deemed to be legal, which have been so declared by the last determination in the house of commons; which last determination concerning any county, shire, city, borough, cinque-port, or place, shall be final to all intents and purposes whatsoever, any usage to the contrary notwithstanding.

Penalty of wilful perjury. *Sec. 5.* “ And be it further enacted by the authority aforesaid, That if any returning officer, elector, or person taking the oath or affirmation herein before mentioned, shall be guilty of wilful and corrupt perjury, or of false affirming, and be thereof convicted by due course of law, shall incur and suffer the pains and penalties, which by law are enacted or inflicted in cases of wilful and corrupt perjury.

Persons convicted never capable to vote. *Sec. 6.* “ And be it further enacted by the authority aforesaid, That no person convicted of wilful and corrupt perjury, or subornation of perjury, shall, after such conviction, be capable of voting in any election of any member or members to serve in parliament.

Persons taking money or reward for their vote, &c. *Sec. 7.* “ And be it further enacted by the authority aforesaid, That if any person who hath, or claimeth to have, or hereafter shall have, or claim to have, any right to vote in any such election, shall, from and after the said twenty-fourth day of June, which shall be in the year of our Lord one thousand

thousand seven hundred and twenty-nine, ask, receive, or take any money, or other reward, by way of gift, loan, or other device, or agree or contract for any money, gift, office, employment, or other reward whatsoever, to give his vote, or to refuse or forbear to give his vote in any such election, or if any person by himself, or any person employed by him, doth or shall, by any gift or reward, or by any promise, agreement, or security for any gift or reward, corrupt or procure any person or persons, to give his or their vote or votes, or to forbear to give his or their vote or votes in any such election, such person, so offending in any of the cases aforesaid, shall for every such offence forfeit the sum of five hundred pounds of lawful money of *Great Britain*, to be recovered as before directed, together with full costs of suit; and every person offending in any of the cases aforesaid, from and after judgment obtained against him in any such action of debt, bill, plaint, or information, or summary action, or prosecution, or being any otherwise lawfully convicted thereof, shall for ever be disabled to vote in any election of any member or members to parliament, and also shall for ever be disabled to hold, exercise, or enjoy any office or franchise, to which he and they then shall or at any time afterwards may, be intitled, as a member of any city, borough, town corporate, or cinque-port, as if such person was naturally dead.

Secl. 8. " And be it further enacted by the authority aforesaid, That if any person offending against this act shall, within the space of twelve months next after such election as aforesaid, discover any other person or persons offending against this act, so that such person or persons so discovered be thereupon convicted, such person so discovering, and not having been before that time convicted of any offence against this act, shall be indemnified, and discharged from all penalties and disabilities, which he shall then have incurred by any offence against this act. Offenders in 12 months after the election discovering others indemnified.

Secl. 9. " And for the more effectual observance of this act, be it enacted, That all and every the sheriffs, mayors, bailiffs, and other officers, to whom the execution of any writ or precept for electing any member or members to serve in parliament shall belong or appertain, shall, and are hereby required, at the time of such election, immediately after the reading such writ or precept, read, or cause to be read openly before the electors there assembled, this present act, and every clause therein contained; and the same shall also openly be read once in every year at the general quarter sessions of the peace to be holden next after *Easter*, for any county or city, and at every election of the chief magistrate in any borough, town-corporate, or cinque-port, and at the annual election of magistrates, and town-counsellors for every borough within that part of *Great Britain* called *Scotland*. This act to be read by the sheriff, &c. after reading the writ, and at the quarter sessions after Easter.

Secl. 10. " And be it further enacted by the authority aforesaid, That every sheriff, under-sheriff, mayor, bailiff, and other officer, to whom the execution of any writ or precept for the electing of members to serve in parliament doth belong, for every wilful offence, contrary to this act, shall forfeit the sum of fifty pounds, to be recovered, together with full costs of suit, in the manner before directed. Wilful offence forfeits 50l.

Prosecution to
commence
within two
years.

SECT. 11. " Provided always, and it is hereby declared and enacted by the authority aforesaid, That no person shall be made liable to any incapacity, disability, forfeiture, or penalty, by this act laid or imposed, unless prosecution be commenced within two years after such incapacity, disability, forfeiture, or penalty shall be incurred, or in case of a prosecution the same be carried on without wilful delay; any thing herein contained to the contrary notwithstanding."

STAT. 11 Geo. 2, c. 24, [A. D. 1738, intituled] " An act to amend an act passed in the twelfth and thirteenth year of the reign of king *William the Third*, intituled, *An act for preventing any inconveniencies that may happen by privilege of parliament.*"

Preamble re-
citing the act
12 & 13 W.
3, c. 3.

" Whereas for the preventing all delays the king or his subjects may receive in any of his courts of law or equity, and for their ease in the recovery of their rights and titles to any lands, tenements, or hereditaments, and their debts, or other dues, for which they have cause of suit or action, an act was made in the twelfth and thirteenth year of the reign of king *William the Third*, intituled, *An act for preventing any inconveniencies that may happen by privilege of parliament*; whereby nevertheless the privilege of parliament is restrained only in actions or suits commenced or prosecuted in the courts, and for the causes therein particularly mentioned: and whereas great inconveniencies may happen to his majesty, and his subjects, with respect to their rights and titles to lands, tenements, or hereditaments, and their debts, or other dues, for which they have cause of suit or action, if the privilege of parliament be not restrained upon actions or suits commenced or prosecuted in other courts within *Great Britain* and *Ireland*; for remedy thereof, be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That from and after the first day of *June*, one thousand seven hundred and thirty-eight, any person and persons shall and may commence and prosecute in *Great Britain* or *Ireland* any action or suit in any court of record, or court of equity, or of admiralty, and in all causes matrimonial and testamentary in any court, having cognizance of causes matrimonial and testamentary, against any peer or lord of parliament of *Great Britain*, or against any of the knights, citizens, and burgesses of the house of commons of *Great Britain* for the time being, or against their or any of their menial or other servants, or any other person intitled to the privilege of the parliament of *Great Britain*, at any time from and immediately after the dissolution or prorogation of any parliament, until a new parliament shall meet, or the same be re-assembled, and from and immediately after any adjournment of both houses of parliament for above the space of fourteen days, until both houses shall meet or re-assemble; and that the said respective courts shall and may after such dissolution, prorogation, or adjournment, as aforesaid, proceed to give judgement, and to make final orders, decrees, and sentences,

tences, and award execution thereupon; any privilege of parliament to the contrary notwithstanding.

Secd. 2. “ Provided nevertheless, That this act shall not extend to sub-
 ject the person of any of the knights, citizens, and burgesſes of the houſe
 of commons of *Great Britain*, or any other perſon intitled to privilege of
 parliament, to be arreſted during the time of privilege; nevertheless it
 ſhall and may be lawful to and for any of the courts of great ſeſſions in
Wales, courts of ſeſſion in the counties palatine of *Cheſter*, *Lancaſter*, and
Durham, courts of king’s bench, common-pleas, and exchequer in *Ire-*
land, after any diſſolution, prorogation, or ſuch adjournment as aforeſaid,
 or before any ſeſſion of parliament, or meeting of both houſes, as afore-
 ſaid, to have and uſe ſuch and the like methods of proceeding, and to
 iſſue ſuch and the like proceſs againſt any ſuch peer or lord of parliament,
 or againſt any of the ſaid knights, citizens, and burgesſes, or other per-
 ſons intitled to the privilege of the parliament of *Great Britain*, as the
 courts of king’s bench, common pleas, and exchequer in *England*, are
 by the ſaid recited act impowered and directed to uſe and iſſue reſpec-
 tively; and that it ſhall and may be lawful to and for the court of chan-
 cery of *Ireland*, and the court of equity in the exchequer there, to have
 and uſe ſuch and the like methods of proceeding, and to iſſue ſuch and
 the like proceſs within the times and againſt the perſons aforeſaid, as the
 high court of chancery of *Great Britain*, and the court of exchequer in
England, are by the ſaid recited act reſpectively directed and impowered
 to uſe and iſſue; and that it ſhall and may be lawful to and for any of
 the other courts herein before deſcribed, the proceſs whereof is not par-
 ticularly directed by the ſaid recited act, or by this act, after any diſſo-
 lution, prorogation, or ſuch adjournment as aforeſaid, or before any
 ſeſſion of parliament, or meeting of both houſes as aforeſaid, to iſſue
 ſuch and the like proceſs againſt any ſuch peer or lord of parliament, or
 againſt any of the ſaid knights, citizens, or burgesſes, or other perſon in-
 titled to the privilege of parliament, as ſuch courts may now lawfully iſſue
 againſt perſons not liable to be arreſted or impriſoned.

Secd. 3. “ And be it enacted by the authority aforeſaid, That where
 any plaintiff ſhall by reaſon or occaſion of privilege of parliament be ſtayed
 or prevented from proſecuting any ſuit by him commenced; ſuch plain-
 tiff ſhall not be barred by any ſtatute of limitation, or non-ſuited, diſ-
 miſſed, nor his ſuit diſcontinued for want of proſecution of the ſuit by
 him begun; but ſhall from time to time upon the riſing of the parlia-
 ment be at liberty to proceed to judgement and execution.

Secd. 4. “ And it is hereby enacted, That no action, ſuit, proceſs, or-
 der, judgement, decree, or proceeding in law or equity againſt the king’s
 original and immediate debtor, for the recovery or obtaining of any debt
 or duty originally and immediately due or payable unto his majeſty, his
 heirs, or ſucceſſors, or againſt any accountant, or perſon anſwerable or
 liable to render any account unto his majeſty, his heirs, or ſucceſſors, for
 any part or branch of any of his or their revenues, or other original and
 immediate debt or duty; or the execution of any ſuch proceſs, order,
 judgement,

but the persons not to be arrested.

judgement, decree, or proceedings, shall be impeached, stayed, or delayed in any court in *Great Britain* or *Ireland*, by or under the colour or pretence of any privilege of the parliament of *Great Britain*; yet so nevertheless, that the person of any such debtor or accountant, or person answerable or liable to account, being a peer or lord of parliament, of *Great Britain*, shall not be liable to be arrested or imprisoned by or upon any such suit, order, judgement, decree, process, or proceedings; or being a member of the house of commons of *Great Britain*, shall not, during the continuance of the privilege of parliament, be arrested or imprisoned by or upon any such order, judgement, decree, process, or proceedings.

Proviso.

Sett. 5. "Provided nevertheless, That neither this act, nor any thing therein contained, shall extend to give any jurisdiction, power, or authority to any court, to hold plea in any real or mixt action, in any other manner than such court might have done before the making this act."

STAT. 18 *Geo.* 2, c. 18, [*A. D.* 1745, intituled] "An act to explain and amend the laws touching the elections of knights of the shire to serve in parliament for that part of *Great Britain* called *England*."

Instead of the oath by 10 Ann. c. 23, another is appointed for freeholders.

"Whereas several delays and inconveniencies have arisen in elections of knights of shires to serve in parliament, to the great trouble and expence of the candidates and electors; for remedy thereof, be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That from and after the twenty-fourth day of *June*, one thousand seven hundred and forty-five, upon every election to be made within that part of *Great Britain* called *England*, or dominion of *Wales*, of any knight or knights of the shire to serve in parliament, every freeholder, instead of the oath or affirmation prescribed to be taken by an act of parliament made in the tenth year of the reign of her late majesty queen *Anne*, intituled, *An act for the more effectual preventing fraudulent conveyances, in order to multiply votes for electing knights of shires to serve in parliament*, before he is admitted to poll at the said election, shall (if required by the candidates, or any of them, or any other person having a right to vote at the said election) first take the oath (or being one of the people called *quakers*, the solemn affirmation) following; *videhæc*,

The oath.

YOU shall swear (or being one of the people called *quakers*, you shall solemnly affirm) that you are a freeholder in the county of _____ and have a freehold estate, consisting of _____ (specifying the nature of such freehold estate, whether messuage, land, rent, tythe, or what else; and if such freehold estate consists in messuages, lands, or tythes, then specifying in whose occupation the same are; and if in rent, then specifying the names of the owners or possessors of the lands or tenements, out of which such rent is issuing, or of some or one of them) lying or being

being at in the county of of the clear yearly value of forty shillings, over and above all rents and charges payable out of, or in respect of the same; and that you have been in the actual possession or receipt of the rents and profits thereof, for your own use, above twelve kalendar months, or that the same came to you, within the time aforesaid, by descent, marriage, marriage settlement, devise, or promotion to a benefice in a church, or by promotion to an office; and that such freehold estate has not been granted or made to you fraudulently, on purpose to qualify you to give your vote; and that the place of your abode is at in and that you are twenty-one years of age, as you believe; and that you have not been polled before at this election.

Which oath (or solemn affirmation) the sheriff by himself, his under-sheriff, or such sworn clerk or clerks, as shall be by him appointed for the taking of the poll, is hereby required to administer: and in case any freeholder or other person taking the said oath or affirmation hereby appointed, shall thereby commit wilful perjury, and be thereof convicted; and if any person do unlawfully and corruptly procure or suborn any freeholder, or other person, to take the said oath or affirmation, in order to be polled, whereby he shall commit such wilful perjury, and shall be thereof convicted, he and they, for every such offence, shall incur such pains and penalties as are in and by two acts of parliament, the one made in the fifth year of the reign of the late queen *Elizabeth*, intituled, *An act for punishing such persons as shall procure or commit wilful perjury, or suborn or procure any person to commit any wilful or corrupt perjury*; the other made in the second year of his present majesty, intituled, *An act for the more effectual preventing and further punishment of forgery, perjury, and subornation of perjury; and to make it felony to steal bonds, notes, or other securities for payment of money, contrary to the said acts.*

By whom to be administered.

Penalty of perjury or subornation, the same as by 5 Eliz. c. 9.

and 2 Geo 2, c. 25.

Sec. 2. " And whereas by the said act made in the tenth year of the reign of her late majesty queen *Anne*, it is enacted as follows; *videlicet.* That from and after the first day of *May*, which was in the year of our Lord one thousand seven hundred and twelve, no person shall vote for the electing of any knight of a shire within that part of *Great Britain* called *England*, in respect or in right of any lands or tenements which have not been charged or assessed to the public taxes, church rates, and parish rates, in such proportion as other lands or tenements of forty shillings *per annum*, within the same parish or township wherein the same shall lie or be, are usually charged: and whereas by an act of parliament made in the twelfth year of the reign of her said late majesty queen *Anne*, for explaining the said recited clause, it is enacted, That the said act, or any thing therein contained, shall not extend, or be construed to restrain any person from voting in such election of any knight of a shire within that part of *Great Britain* called *England*, in respect or in right of any rents, tythes, or other incorporeal inheritances, or any messuages or lands or extraparo-chial places, or any chambers in the inns of court or inns of chancery, or any

Clauses repealed of 10 Annæ, c. 23, §. 2.

and 12 Annæ, §. 1, c. 5.

any messuages or seats belonging to any offices, in regard or by reason that the same have not been usually charged or assessed to all or any the public taxes, church rates, and parish duties, as mentioned in the above recited act, or in respect or right of any other messuages or lands not herein before specified, in regard or by reason that the same have not been usually charged or assessed to all and every the public taxes, church rates, and parish duties aforesaid; provided that such messuages or lands have usually been charged or assessed to some one or more of the said public taxes, rates, or duties, in such proportion as other messuages or lands of forty shillings *per annum*, in the same parish or township where the same shall lie or be, are usually charged to the same; be it enacted by the authority aforesaid, That so much of the said recited act as disables any person to vote for knights of shires, in respect or in right of any lands or tenements which have not been charged or assessed as therein mentioned, shall, from and after the said twenty-fourth day of *June*, be and is hereby repealed.

In part repealed.

Qualification of electors.

Sec. 3. " Provided always, That from and after the said twenty-fourth day of *June*, no person shall vote for the electing of a knight or knights of the shire to serve in parliament within that part of *Great Britain* called *England*, or the principality of *Wales*, in respect or in right of any messuages, lands, or tenements, which have not been charged or assessed towards some aid granted, or hereafter to be granted to his majesty, his heirs, or successors, by a land-tax in *Great Britain*, twelve kalendar months next before such election.

Exception for voting in right of chambers or offices.

Sec. 4. " Provided also, That this act, or any thing therein contained, shall not extend, or be construed to restrain any person from voting in any such election of any knight or knights of a shire, within that part of *Great Britain* called *England*, or principality of *Wales*, in respect or in right of any rents, or any chambers in the inns of court or inns of chancery, or any messuages or seats belonging to any offices, in regard or by reason that the same have not been usually charged or assessed to the aid commonly called *The Land-Tax*; and that the acting commissioners of the land-tax for the time being, or any three or more of them, at their meetings for the respective divisions, shall sign and seal one other duplicate of the copies of the respective assessments to be delivered to them by the several assessors, after all appeals determined, and the same to deliver, or cause to be delivered, to the clerks of the peace for their respective counties, to be by them kept amongst the records of the sessions, to which all persons may resort at all seasonable times, and inspect the same, paying six-pence for such inspection; and the said clerks of the peace, or their deputies, are hereby required forthwith to give copies of the said duplicates, or any part thereof, to any such person or persons who shall require the same, paying after the rate of six-pence for every three hundred words, and so in proportion for any greater or lesser number.

Duplicates of the land-tax assessments to be kept among the records of the sessions;

to be inspected.

or copies taken.

Further qualification of electors.

Sec. 5. " And be it further enacted by the authority aforesaid, That from and after the said twenty-fourth day of *June*, one thousand seven hundred and forty-five, no person shall vote in any such election, without having

having a freehold estate in the county for which he votes, of the clear yearly value of forty shillings, over and above all rents and charges payable out of or in respect of the same, or without having been in the actual possession, or in receipt of the rents and profits thereof, for his own use, above twelve kalendar months, unless the same came to him within the time aforesaid, by descent, marriage, marriage settlement, devise, or promotion to any benefice in a church, or by promotion to an office, or shall vote in respect or in right of any freehold estate, which was made or granted to him fraudulently, on purpose to qualify him to give his vote, or shall vote more than once at the same election: and if any person shall vote in any such election, contrary to the true intent and meaning hereof, he shall forfeit to any candidate for whom such vote shall not have been given, and who shall first sue for the same, the sum of forty pounds, to be recovered by him or them, his or their executors or administrators, together with full costs of suit, by action of debt, in any of his majesty's courts of record at *Westminster*, wherein no essoin, protection, wager of law, privilege, or imparlance, shall be admitted or allowed; and in every such action, the proof shall lie on such person against whom the same was brought, unless the fact, on which such action is grounded, be the having polled more than once at the same election. Penalty of 40*l*.

Sett. 6. " And be it declared by the authority aforesaid, That no public or parliamentary tax, county, church, or parish rate or duty, or any other tax, rate, or assessment whatsoever, to be assessed or levied upon any county, division, rape, lathe, wapentake, ward, or hundred, is or shall be deemed or construed to be any charge, payable out of or in respect of any freehold estate, within the meaning and intention of this act, or of the oath or solemn affirmation herein before directed to be administered to, and taken by every freeholder, if required, as aforesaid. No public tax, to be deemed a charge on a freehold.

Sett. 7. " And be it further enacted by the authority aforesaid, That from and after the twenty-fourth day of *June*, one thousand seven hundred and forty-five, at every such election within that part of *Great Britain* called *England*, and dominion of *Wales*, the sheriff, or in his absence the under-sheriff, or such as he shall depute, shall appoint, make, or erect, or cause to be appointed, made, or erected, at the expence of the candidates, such number of convenient booths or places for taking the poll, as the candidates, or any of them shall, three days at least before the commencement of the poll, desire, so as the same do not exceed the number of rapes, lathes, wapentakes, wards, or hundreds within the said county, and not exceeding in the whole the number of fifteen; and shall affix, or cause to be affixed, on the most public part of each of the said booths or polling places, the name or names of the rape, wapentake, lathe, ward, or hundred, or rapes, wapentakes, lathes, wards, or hundreds, for which such booth or polling place is allotted or designed; and the said sheriff, under-sheriff, or such person as he shall depute, shall appoint a proper clerk or clerks at each of the said booths or polling places, to take the poll (which said clerk or clerks shall be at the expence of the candidates, and be paid not exceeding one guinea *per* day each clerk) Booths to be erected at the expence of the candidates.
proportioned to the hundreds, &c. and not exceeding 15.
Sheriff to appoint a clerk at each booth for polling, at the candidate's expence.

List of towns, and the said sheriff or under sheriff, shall also make out a list for each of the said booths or polling places respectively, of all the several towns, villages, parishes, and hamlets, lying or being wholly or in part in the rape, wapentake, lathe, ward, or hundred, or in the several rapes, wapentakes, lathes, wards, or hundreds, for which such booth or polling place is allotted or designed; and shall, upon request made, deliver a true copy thereof to any of the candidates, or their agents, who shall desire the same, taking for each of the said copies the sum of two shillings, and no more.

of which copies to be given at 2s. each.

Voting at each booth to be regulated by the list:

Exception.

Sec. 8. "And be it further enacted by the authority aforesaid, That no sheriff, under sheriff, or clerk appointed to take the poll at any of the said booths or polling places, shall admit any person to vote for any lands, tenements, or other freehold estate, sworn by the said oath to be lying and being at some parish, town, or place, or parishes, towns, or places, which parish, town, or place, or parishes, towns, or places, or any of them, or any part of them, is not, or are not mentioned in the list so made out for such booth or polling places as aforesaid, unless such lands, tenements, or estate lie or be in some town, liberty, or place not mentioned in any of the lists so made out for all the said booths or polling places as aforesaid.

A cheque book for every poll book allowed each candidate.

Sec. 9. "And be it further enacted by the authority aforesaid, That the sheriff, or in his absence the under sheriff, or such as he shall depute, shall, at every such election, allow a cheque book for every poll book, for each candidate, to be kept by their respective inspectors at every place where the poll for such election shall be taken or carried on.

No sheriff to adjourn a county court for longer than 16 days.

Sec. 10. "And whereas by an act made in the seventh and eighth years of the reign of king William the third, intituled, *An act for the further regulating elections of members to serve in parliament; and for the preventing irregular proceedings of sheriffs, and other officers, in the electing and returning such members*; it is enacted, That upon every election to be made of any knight or knights of the shire, the sheriff of the county where such election shall be made, shall proceed to election at the next county court, unless the same fall out to be held within six days after the receipt of the writ, or upon the same day, and then shall adjourn the same court to some convenient day, giving ten days notice of the time and place of election: and whereas sheriffs have frequently in such cases, where the county court fell out to be held within six days after the receipt of the writ, or upon the same day, made long adjournments of the same, in order to delay proceeding to election; for remedy thereof for the future, be it enacted by the authority aforesaid, That from and after the said twenty-fourth day of June, no sheriff shall in such case, take upon himself to adjourn such court for longer than sixteen days; any law, usage, or custom to the contrary notwithstanding.

Clause of 6 Geo. 2, c. 23, repealed.

Sec. 11. "And whereas by an act made in the sixth year of the reign of his present majesty, intituled, *An act to explain and amend an act made in the seventh and eighth years of the reign of king William the third, intituled, An act for the further regulating elections of members to serve in parliament*;

ment; and for the preventing irregular proceedings of sheriffs, and other officers, in the electing and returning such members, *so far as the same relates to the holding of county courts*; it is among other things enacted, That no county court whatsoever held within that part of *Great Britain* called *England*, shall be adjourned to a *Monday*, a *Friday*, or *Saturday*; and that all and every such adjournment and adjournments, and all and every act and deed done or performed at such courts so adjourned, shall be deemed, adjudged, and taken to be utterly null and void, to all intents and purposes whatsoever: and whereas the same hath been found inconvenient, be it therefore enacted by the authority aforesaid, That from and after the said twenty fourth day of *June*, so much of the said act as is herein before recited, shall be, and is hereby repealed.

Señ. 12. “ And be it further enacted by the authority aforesaid, That in case any such sheriff or under sheriff, who shall preside at any election of any such knight or knights of the shire, within that part of *Great Britain* called *England*, or dominion of *Wales*, shall wilfully offend against, or act contrary to the true intent and meaning of this act, every such sheriff or under sheriff shall be liable to be prosecuted by information, or indictment, in his majesty's court of king's bench at *Westminster*, or in the courts of great sessions in the principality of *Wales*, or at the sessions held for the counties palatine of *Chester*, *Lancaster*, and *Durham*, or at the assizes for the county, city, town, or place, where such offence shall be committed, in which no *noli prosequi* or *cessat processus* shall be granted; any law, custom, or usage to the contrary thereof in any wise notwithstanding. Sheriff, &c. offending, to be prosecuted.

Señ. 13. “ And be it further enacted by the authority aforesaid, That it shall and may be sufficient for the plaintiff, in any action of debt given by this act, to set forth in the declaration or bill, that the defendant is indebted to him, in the sum of No noli prosequi or cessat processus to be granted. and to alledge the particular offence for which the action or suit is brought; and that the defendant hath acted contrary to this act, without mentioning the writ of summons to parliament, or the return thereof; and it shall be sufficient in any indictment or information, for any offence committed contrary to this act, to alledge the particular offence charged upon the defendant; and that the defendant is guilty thereof, without mentioning the writ of summons to parliament, or the return thereof; and upon trial of any issue in any such action, suit, indictment, or information, the plaintiff, prosecutor, or informer, shall not be obliged to prove the writ of summons to parliament, or the return thereof, or any warrant or authority to the sheriff, grounded upon any such writ of summons. The manner of proceeding in case of offence against this act.

Señ. 14. “ Provided always, That every action, suit, indictment, or information given by this act, shall be commenced within the space of nine calendar months after the fact, upon which the same is grounded, shall have been committed. Limitation of actions.

Señ. 15. “ And be it further enacted by the authority aforesaid, That all the statutes of jeofails and amendments of the law whatsoever, shall, and be construed to extend to all proceedings in any action, suit, indictment, Statutes of jeofails, &c. extended to proceedings on this act.

ment, or information, given or allowed by this act, or which shall be brought in pursuance thereof.

Sett. 16. " Provided always, and be it further enacted by the authority aforesaid, That in case the plaintiff or informer, in any action, suit, indictment, or information given by this act, shall discontinue the same, or be nonsuited, or judgment be otherwise given against him; then, and in any of the said cases, the defendant against whom such action, suit, or information shall have been brought, shall recover his treble costs.

Treble costs.
19 Geo. 2, c.
28.

By *Stat. 2 Geo. 3, c. 20, sect. 117*, it shall be lawful for his majesty to issue a proclamation for the meeting of the parliament, in case of invasion, &c. See title *Militia*, p. 158.

A member of parliament shall have the privilege of parliament, not only for himself and his servants, to be freed from arrests, subpœna, citations, and the like; but also for his horses and goods to be free from distresses; but for treason, felony, and breach of the peace, there can be no privilege. 4 *Inst.* 24, 25.

Court determined that members of parliament have privilege *redeundo* after a dissolution; but would not say how long. See *Stran. Rep.* 985, Col. *Pitt's case*. This case is more fully reported in *Reports in time of Lord Hardwicke*, p. 16, &c.

No peer or lord of parliament hath privilege against being compelled to pay obedience to a writ of *habeas corpus* directed to him. See the case of *Earl Ferrers*, under title *Bail*, p. 222.

Partition.

PARTITION, (*partitio*,) is a dividing of land descended by the common law, or by custom, among *cobbers* or *parceners*, where there are two at least; and this *partition* is made four ways, whereof three are by agreement, the fourth by compulsion. The first *partition* by agreement is, when they themselves divide the land equally into so many parts as they are coparceners, and each to chuse one share, or part according to order. The second is, when they choose certain of their friends to make the division for them. The third is, by drawing lots thus: having first divided the land into as many parts as there are parceners, they write every part severally in a distinct scroll, and wrapping it up, throw each of them into a hat, bason, or such thing, out of which each parcener draws one, according to their seniority, and so the land is severally allotted. The fourth

fourth *partition*, which is by compulsion, when one or more of the par-
ceners, by reason of the refusal of some other, sues out a writ of *partitions*
facienda, by force whereof they shall be compelled to part the land.
Cowell, Ed. 1727.

STAT. 8 & 9 Will. 3, c. 31, [A. D. 1697, intituled,] “ An act for the
easier obtaining partitions of lands in coparcenary, joint tenancy, and te-
nancy in common.”

“ Whereas the proceedings upon writs of partition between coparceners
by the common law or custom, joint tenants, and tenants in common,
are found by experience to be tedious, chargeable, and oftentimes inef-
fectual, by reason of the difficulty of discovering the persons and estates
of the tenants of the manors, messuages, lands, tenements, and heredita-
ments, to be divided, and the defective or dilatory executing and return-
ing of the process of summons, attachment, and distress, and other impe-
diments, in making and establishing of partitions, by reason of which di-
vers persons having undivided parts or purparts are greatly oppressed and
prejudiced, and the premises are frequently wasted and destroyed, or lie
uncultivated and unmanured, so that the profits of the same are totally or
in a great measure lost : for remedy whereof, be it enacted by the king’s
most excellent majesty, by and with the advice and consent of the lords
spiritual and temporal, and commons, in this present parliament assembled,
and by the authority of the same, That from and after the first day of
May, one thousand six hundred ninety-seven, after process of *pone* or at-
tachment returned upon a writ of partition, affidavit being made by any
credible person of due notice given of the said writ of partition to the te-
nant or tenants to the action, and a copy thereof left with the occupier, or
tenant or tenants, or if they cannot be found, to the wife, son, or daugh-
ter (being of the age of one and twenty years or upwards) of the tenant or
tenants, or to the tenant in actual possession, by virtue of any estate of free-
hold, or for term of years, or uncertain interest, or at will, of the manors,
lands, tenements, or hereditaments, whereof the partition is demanded
(unless the said tenant in actual possession be demandant in the action) at
least forty days before the day of return of the said *pone* or attachment, if
the tenant or tenants to such writ, or any of them, or the true tenant to
the messuages, lands, tenements, and hereditaments, as aforesaid, shall
not in such case, within fifteen days after return of such writ of *pone* or
attachment, cause an appearance to be entered in such court where such
writ of *pone* or attachment shall be returnable, then, in default of such ap-
pearance, the demandant having entered his declaration, the court may
proceed to examine the demandant’s title, and quantity of his part and
purpart, and accordingly, as they shall find his right, part, and purpart
to be, they shall, for so much give judgment by default, and award a writ
to make partition, whereby such proportion, part, and purpart may be
set out severally ; which being executed after eight days notice given to
the

After process
of *pone* or at-
tachment re-
turned on writ
of partition,

if the tenant
do not enter
an appearance
within 15
days,

court may
proceed to
examine the
demandant’s
title,

the occupier, or tenant or tenants of the premisses, and returned, and thereupon final judgment entred, the same shall be good, and conclude all persons whatsoever, after notice, as aforesaid, whatever right or title they have or may at any time claim to have in any of the manors, messuages, lands, tenements, and hereditaments, mentioned in the said judgment and writ of partition, although all persons concerned are not named in any of the proceedings, nor the title of the tenants truly set forth.

Sec. 2. "Provided always, That if such tenant or person concerned, or either of them, against whom, or their right or title, such judgment by default is given, shall, within the space of one year after the first judgment entred, or in case of infancy, coverture, *non sane memorie*, or absence out of the kingdom, within one year after his, her, or their return, or the determination of such inability, apply themselves to the court by motion where such judgment is entred, and shew a good and probable matter in bar of such partition, or that the demandant hath not title to so much as he hath recovered, then in such case the court may suspend or set aside such judgment, and admit the tenant and tenants to appear and plead, and the cause shall proceed according to due course of law, as if no such judgment had been given: and if the court, upon hearing thereof, shall adjudge for the first demandant, then the said first judgment shall stand confirmed, and be good against all persons whatsoever, except such other persons as shall be absent or disabled, as aforesaid; and the person or persons so appealing shall be awarded thereupon to pay costs, or if within such time or times aforesaid, the tenants or persons concerned, admitting the demandant's title, parts, and purparts, shall shew to the court any inequality in the partition, the court may award a new partition to be made, in presence of all parties concerned (if they will appear) notwithstanding the return and filing upon record the former, which said second partition returned and filed shall be good and firm for ever against all persons whatsoever, except as before excepted.

If tenant or other shall in one year after judgment entred, or in case of infancy, &c. shew a good matter in bar of such partition, &c. the court may set aside such judgment.

Person appealing to pay costs.

No plea in abatement to be admitted.

Where high sheriff cannot be present at the execution of a judgment in partition, under sheriff in presence of two justices may proceed thereupon.

Tenants before the division, to be tenants under the same condition, &c.

Sec. 3. "And be it further enacted by the authority aforesaid, That no plea in abatement shall be admitted or received in any suit for partition, nor shall the same be abated by reason of the death of any tenant.

Sec. 4. "And be it further enacted by the authority aforesaid, That when the high sheriff, by reason of distance, infirmity, or any other hindrance, cannot conveniently be present at the execution of any judgment in partition, in such case the under sheriff in presence of two justices of the peace of the county where the lands, tenements, or hereditaments to be divided do lie, shall and may proceed to execution of any writ of partition, by inquisition in due form of law, as if the high sheriff were then personally present; and the high sheriff thereupon shall, and is hereby enabled and required to make the same return as if he were personally present at such execution: and in case such partition be made, returned, and filed, he or they that were tenant or tenants of any of the said messuages, lands, tenements, and hereditaments, or any part or purpart thereof, before they were divided, shall be tenant or tenants for such part set out severally

severally to the respective landlords or owners thereof, by and under the same conditions, rents, covenants, and reservations, where they are or shall be so divided, and the landlords and owners of the several parts and purparts so divided and allotted, as aforesaid, shall warrant and make good unto their respective tenants, the said several parts severally, after such partition, as they are or were bound to do, by any copy, leases, or grants of their respective parts, before any partition made; and in case any demandant be tenant in actual possession to the tenant to the action for his part and proportion, or any part thereof, in the messuages, lands, tenements, and hereditaments, to be divided by virtue of a writ of partition, as aforesaid, for any term of life, lives, or years, or uncertain interest, the said tenant shall stand and be possessed of the said purparts and proportions for the like term, and under the same conditions and covenants, when it is set out severally in pursuance of this or any other act, statute, or law to that purpose.

SECT. 5. "And be it further enacted by the authority aforesaid, That the respective sheriffs, their under sheriffs, and deputies, and in case of sickness or disability in the high sheriff, all justices of peace, within their respective divisions, shall give due attendance to the executing such writ of partition, unless reasonable cause be shewn to the court upon oath, and there allowed of, or otherwise be liable every of them to pay unto the demandant such costs and damages as shall be awarded by the court, not exceeding five pounds, for which the demandant or plaintiff may bring his action in any of his majesty's courts of record at *Westminster*, wherein no essoin, protection, privilege, or wager of law shall be allowed, nor any more than one imparlance; and in case the demandant doth not agree to pay unto the sheriffs or under sheriffs, justices and jurors, such fees as they shall respectively demand for their pains and attendance in the execution of the same, and returning thereof, then the court shall award what each person shall receive, having respect to the distance of the place from their respective habitations, and the time they must necessarily spend about the same, for which they may severally bring their actions, as aforesaid.

SECT. 6. "Provided always, That this act shall continue for seven years, and from thence to the end of the next session of parliament, and no longer. Made perpetual by 3 & 4 Annæ, cap. 18, sect. 2.

And landlords to make good to their tenants their said parts, as before partition made.

Sheriffs, under sheriffs, &c. to give due attendance for executing writs of partition.

Demandant not paying sheriff, &c. his fees, court to award the same.

This act to continue for 7 years.

Peers.

PEERS, (*Pares*,) signify in our common law; those that are impanelled in an inquest upon any man, for the convicting or clearing him of any offence, for which he is called in question; and the reason thereof

of is, because the course and custom of our nation is to try every man in such a case by his equals, or *peers*. *Westm.* 1, cap. 6. So *Kitchen* useth it, *fel.* 78, in these words, *Mais si le amerciement soit assire per pares*. And this word in this sense is not in use with us only, but with other nations also. For *Pares sunt convassalli quorum sententia vasallus propter feloniam est condemnatus*. *Bartilayus de Regno*, lib. 4, cap. 2. *Et pares sunt qui ab eodem domino feudum tenent*. *Lib.* 1, *Feudor.* cap. 26. *Cowell, edit.* 1727.

PEERS OF THE REALM, (*pares regni, proceres*,) are the nobility of the kingdom, and lords of parliament; who are divided into dukes, marquises, earls, viscounts, and barons: and the reason why they are called *peers*, is for that notwithstanding there be a distinction of dignities in our nobility, yet in all public actions they are equal; as in their votes of parliament, and in passing upon the trial of any nobleman. *S. P. C. lib.* 3. And this appellation seems to be borrowed from *France*, and from those twelve *peers* that *Charlemain* instituted in that kingdom, of whom you may read *Vincent. Lupanus de magistr. Francie, lib.* 1, cap. *Pares Francie*. And though we have borrowed the appellation, and applied it with some reason to all lords of parliament, yet we have no set number; for our nobles may be more or less, as the king pleaseth. *Cowell, edit.* 1727.

Of the privilege of peers; and proceedings at law and in equity against them.

A bill of *Middlesex* was issued out of *B. R.* by an attorney of the court against the countess of *H.* which was discharged by *superfedeas* without pleading; because it appeared by the record, that she was a peeress, and the attorney was committed for suing out the process. *Vent.* 293; *Trin.* 28 *Car* 2, *Anon.*

Widows of peers are to have the privilege of peers not to be arrested; but as to privilege of parliament, it was determined both ways in 1676. See 2 *Chan. Cases* 224, *Anon.*

In ejectment a special verdict was found on a trial at bar, and thereupon judgment for the defendant, and costs taxed; and after affidavit of the demand of the costs, a motion was made for an attachment against the dutchess, (the duke being dead) she being one of the lessors, for non-payment of costs; and it was alledged, that if the court did not grant it, the defendant would be remediless; for though in other cases a *distringas* issues against peers, yet in this case no process can go but an attachment. But the court refused to grant an attachment against the person of the dutchess, but ordered her to shew cause why an attachment, as to her goods and chattels, should not be issued; which rule was afterwards made absolute. *Rep. of Pract. in C. B.* 7, 8; *Ill.* 12 *Ann.* 1713, *Thornby, on the demise of the duke and dutchess of Hamilton v. Fleetwood*.

A peer, or lord of parliament, cannot be an approver; for it is against *Magna Charta* for him to pray a coroner. 3 *Inst.* 129, cap. 56; 2 *Hawk. Pl. C.* 205, cap. 24, *sect.* 3.

In case of goods of a peer taken on a foreign attachment, and removal of the cause into C. B. he must find bail, and the bail shall be liable to pay the condemnation. And for execution on a statute staple, merchant, on the stat. of *Atton Burnel*, or on the stat. of 23 H. 8, the body of a baron shall be taken in execution; for by these statutes such persons were not exempted. 2 Le. 173, pl. 209; Trin. 29 Eliz. C. B. *Harris v. Lord Mountjoy*.

It was held, that a nobleman shall be bound with his bail in a recognizance to render his body; and that upon the stat. of 13 Ed. 1, if he hath not goods or lands, his body shall be taken in execution; for the law in such case excepts only clerks. 4 Le. 6; 29 Eliz. in C. B. *Anon*'.

If a bill in chancery be exhibited against a peer, the course is first for my lord keeper to write a letter to him; and if he doth not answer, then a *subpœna*; then an order to shew cause why a sequestration should not go; and if he still stands out, then a sequestration. Because there can be no process of contempt against his person. 2 Vent. 342; Mich. 22 Car. 2, *Anon*'.

If during the time of privilege, you want to proceed immediately against a privileged person, you must either get him to agree to wave his privilege, which in most cases (if he be a man of honour, &c.) he will not refuse; or you may petition the house where he sits, that he may do so, and then he seldom refuses it; or if he does, the house, if it see cause, will order him to wave his privilege. *Curs. Chan.* 499, cap. 18.

Note; If the waver of privilege be of his own generosity, or a voluntary act, it is necessary that you have it under his hand, or his solicitor's hand, for your indemnity; for parol waver, in such case, will not be sufficient. *Curs. Canc.* 499, cap. 18.

It is said, if a trustee be made a defendant here, he shall not have privilege, though he be a member of parliament. *Quære.* *Curs. Canc.* 499, cap. 18.

Distingas is the first process against a peer on an information for an intrusion on the king's lands, or for a trover and conversion of the king's goods. 2 Hawk. Pl. C. 284, cap. 27, sect. 12, cites *Co. Ent.* 387.

In what cases peers are to be sworn; and for what degraded.

In the pleas of parliament, 18 Ed. 1, between the earl of Gloucester and earl of Hereford, *John de Hastings* a baron, upon long debate whether he ought to be sworn because he was a peer of the realm, it was resolved, that he ought to lay his hand to the book. The like was resolved, 10 Car. in B. R. by the court where the lord Dorset's testimony was requisite. See D. 314, b. marg. pl. 98.

A bill was against a peeress to discover deeds, she answers on her honour and confesses deeds. She shall produce them only upon her honour, and not on oath. Ch. Prec. 92; Pasch. 1699, *Duke of Hamilton v. Lady Gerrard*.

Where a peer is to answer to a bill, his answer put in on his honour is sufficient; but where a peer is to answer interrogatories, to make an affidavit, or be examined as a witness, he must be on his oath; *per Harcourt lord keeper.* 2 *Salk.* 513; in *Canc. Sir Thomas Meers v. Lord Sturton.*

George Nevil, Duke of Bedford, was degraded by force of an act of parliament, 16 *June* 17 *Ed.* 4, which act, reciting the making of the said *Sir George* duke, doth express the cause of his degradation in these words, *viz.* And forasmuch as it is openly known, that the said *George* hath not, nor by inheritance may have any livelihood to support the said name, estate, and dignity, or any name of estate; and oftentimes it is so seen, that when any lord is called to high estate, and hath not convenient livelihood to support the same dignity, it induceth great poverty and indigence, and causeth oftentimes great extortion, embracery, and maintenance to be had, to the great trouble of all such countries where such estate shall happen to be: wherefore the king by advice of his lords spiritual and temporal, and by the commons in this present parliament assembled, and by the authority of the same, ordaineth, establisheth, and enacteth, That from henceforth the same creation and making of the said duke, and all the names of dignity given to the said *George*, or to *John Nevil* his father, be from henceforth void and of none effect, &c. In which act these things are to be observed: first, That although the duke had not any possessions to support his dignity, yet his dignity cannot be taken from him without an act of parliament. Secondly, The inconveniencies do appear, where a great state and dignity is, and no livelihood to maintain it. Thirdly, It is a good reason to take away such dignity by act of parliament, and therefore the said act of the 28 *Hen.* 8, shall be expounded, according to the general words of the writ, to take away such inconvenience. 12 *Rep.* 106, 107, in the earl of *Shrewsbury's* case.

Of the trial of peers, and the order and process of trial.

All the barons of parliament shall be tried for treason, felony, misprision, or as accessory, at the suit of the king by their peers. By *Magna Charta* 9 *H.* 3, 39, *Non super eum ibimus, &c. nisi per legale judicium parium suorum.* 2 *Inst.* 49; 9 *Co.* 30, b; *Sta.* 152, 153. So all the nobility, who are peers of parliament. So by the common law, which is now affirmed by the stat. 20 *H.* 6, *cap.* 9. All dutchesses, countesses, and baronesses, who are noble by descent, creation, or marriage. 2 *Inst.* 50. And marchionesses and viscountesses, &c. though not named by the stat. 20 *H.* 6, 9. 2 *Inst.* 50. So the queen consort, or dowager. 2 *Inst.* 50. And a peer cannot waive his trial by his peers. *Kel.* 56, in marg. *Mod.* 621; 1 *Tr.* 265; 2 *Rush.* 94.

But the nobles of another kingdom, or who are not barons of our parliament, shall not be tried by the peers of parliament. By the common law, confirmed by parliament, 4 *Ed.* 3; 2 *Inst.* 50; 7 *Co.* 15, 16; *Calvin.* 3 *Inst.* 30. Nor a woman, noble by marriage, who has lost her
4 dignity

dignity by subsequent marriage under the degree of nobility. 2 *Inst.* 50. Nor an archbishop or bishop; for they are not peers inheritable. *Sheld.* J. P. If he be not accused in parliament. 4 *Seld.* 3 vol. 2, p. 1541. 3 *Inst.* 30. For they make proxies after plea, and withdraw themselves. 3 *Inst.* 31. So a baron of parliament shall not be tried by his peers in an appeal, which is the suit of the party. 2 *Inst.* 49; 9 *Co.* 30, b; *Sta. P. C.* 152, a; 10 *Ed.* 4, 6, b; 3 *Inst.* 30.

By stat. 7 *W.* 3, cap. 3, s. 10, it is enacted, That upon the trial of any peers or peeresses, either for treason or misprision of treason, all the peers who have a right to sit and vote in parliament, shall be duly summoned 20 days at least before the trial, and every peer so summoned and appearing shall vote in the trial, first taking the oaths of allegiance and supremacy required by 1 *W. & M.* and subscribing and repeating the test enjoined by 30 *Car.* 2.

Señ. 11. Provided, That this act shall not extend to impeachments or other proceedings in parliament.

Señ. 12. Nor to the treasons of counterfeiting the coin, the great seal, privy seal, sign manual or privy signet.

By the 6 *Ann.* cap. 23, *señ.* 12, peers shall be indicted in *Scotland* as in *England*.

If a peer be impleaded by a commoner, yet such cause shall not be tried by peers, but by a jury of the country; for though the peers are the proper *pares* to a lord of parliament in capital matters, where the life and nobility of a peer is concerned; yet in matter of property, the trial of fact is not by them, but by the inhabitants of those counties where the facts arise, since such peers living through the whole kingdom could not be generally cognizant of facts arising in several counties, as the inhabitants themselves where they are done; but this want of having noblemen for their jury was compensated as much as possible, by returning persons of the best quality; therefore a knight is necessary to be summoned in any cause where a peer is party. *G. Hist. C. B.* 78, 79, cap. 8.

It has been adjudged, that if a peer on an arraignment before the lords refuse to put himself on his peers, he shall be dealt with as one that stands mute; for it is as much the law of the land, that a peer be tried by his peers, as a commoner by commoners; yet if one who has a title to peerage be indicted and arraigned as a commoner, and plead not guilty, and put himself upon his country, it has been adjudged, that he cannot afterwards suggest that he is a peer, and pray a trial by his peers. 2 *Hawk. Pl. C.* 425, cap. 44, s. 19.

The order and process of this trial appears *anno* 1 *H.* 4, 1, and *anno* 13 *H.* 8, 13. That when a lord of the parliament is to be arraigned of treason or felony, of which he is indicted, the king by his letters patents shall make one great and sage lord to be the high steward of *England* for the day of the arraignment, who before the said day shall make precept to his serjeant at arms, (who is appointed to serve him during the time of his commission,) to cause to come before him twenty or eighteen lords of the

parliament at the same day; and after at the day when the steward shall be under the cloth of state upon the arraignment of the prisoner, and has caused to be read his commission, the said serjeant shall return the said precept, and the lords shall be thereupon demanded, and when they have appeared, and are seated in their places, the constable of the *Tower* shall be demanded to bring his prisoner to the court, who shall be conducted by him to the bar, and then the said high steward shall shew to the prisoner the cause for which the king has assembled there the lords and him, and command him to answer without any dread, and thereupon shall cause the clerk of the crown to read the indictment to him, and to demand of him if he be guilty or not, to which after he has answered Not guilty, the clerk shall demand further of him, how he will be tried? to which he may say, by God and his peers; and immediately upon this the serjeants and king's attorney shall give evidence against him; to which, when the prisoner has answered, the said constable shall be commanded to retire with the said prisoner from the bar to some place for the time that the lords secretly shall take in the said court together; and thereupon the lords shall rise from their places, and consult together, and that which they do they do upon their honour, without any oath to be administered to them; and when all of them, or the greater part of them are agreed they shall return to their places, and seat themselves; and then the high steward shall demand of the youngest lord by himself, if he who is arraigned be guilty or not? and so of him who is next to the youngest, and so of the rest *seriatim*, till he has perused all; and each of the lords shall answer by himself; and then the said steward shall send for the said prisoner, who shall be brought back to the bar, to whom the said steward shall rehearse the verdict, and give judgment accordingly. *Staunf. Pl. C. 152, lib. 3, cap. 1.* See 16 *Vin. Abr.* tit. *Peer.*

STAT. 1 Ed. 6, c. 12, [*A. D. 1547, intituled,*] “An act for the repeal of certain statutes concerning treasons and felonies.”

Sett. 14. “And over that, be it enacted by the authority aforesaid, That A lord of the parliament in all and every case and cases, where any of the king's majesty's subjects shall have his shall and may, upon his prayer, have the privilege of clergy as a clerk clergy for the convict, that may make purgation in all those cases, and every of them, first offence of and also in all and every case and cases of felony, wherein the privilege and felony, though and benefit of clergy is restrained, excepted, or taken away by this statute or he cannot act (wilful murder and poisoning of malice premeditated only excepted) the read, and lord and lords of the parliament, and peer and peers of the realm having without burning place and voice in parliament, shall by virtue of this present act, of common grace, upon his or their request or prayer, alledging that he is a lord or peer of this realm, and claiming the benefit of this act, though he cannot read, without any burning in the hand, loss of inheritance, or corruption of his blood, be adjudged, deemed; taken and used for his first time only, to all intents, constructions, and purposes, as a clerk convict, and shall

shall be in case of a clerk convict, which may make purgation without any further or other benefit or privilege of clergy, to any such lord or peer, from thenceforth at any time after, for any cause to be allowed, adjudged or admitted; any law, statute, usage, custom, or any other thing to the contrary in any wise notwithstanding.

Perjury and Subornation.

PERJURY AND SUBORNATION. Perjury (*perjurium est mendacium cum juramento firmatum,*) is a crime committed, when a lawful oath is administered by any that hath authority to any person in any judicial proceeding, who swears absolutely and falsely in a matter material to the issue, or cause in question, by their own act, or by the subornation of others. And if a man call me *perjured man*, I may have my action upon the case, but it must be intended contrary to my oath in a judicial proceeding: but for calling me a *forsworn man*, no action lies; because the *forswearing* may be *extra judicial*. Coke's Inst. 3 part, fol. 163.

Perjury by the common law is defined a wilful false oath by one who, being lawfully required to depose the truth in any proceeding in a court of justice, swears absolutely in a matter of some consequence to the point in question, whether he be believed or not. 2 Hawk. P. C. 272.

Subornation of perjury by the common law is an offence in procuring a man to take a false oath amounting to perjury, who actually takes such oath; but it seemeth clear; that if the person, incited to take such an oath, do not actually take it, the person by whom he was so incited is not guilty of subornation; yet it is certain, that he is so liable to be punished, not only by fine, but also by infamous corporal punishment. 1 Rol. Abr. 41, 57; Yelv. 72; Cro. Jac. 158; 2 Keb. 399; 3 Mod. 122; 1 Hawk. P. C. 177.

What is perjury by the common law, and how restrained and punished.

1st, It is necessary to constitute the offence perjury, that the false oath be taken wilfully, viz. with some degree of deliberation, and not merely owing to surprize or inadvertency, or a mistake of the true state of the question. 5 Mod. 350.

2dly, The oath must be taken either in a judicial proceeding, or in some other public proceeding of the like nature, wherein the king's honour or interest are concerned ; or before commissioners appointed by the king to enquire of the forfeitures of his tenants, or of defective titles wanting the supply of the king's patents ; but it is not material whether the court, in which a false oath is taken, be a court of record or not, or whether it be a court of common law, or a court of equity, or civil law, &c. or whether the oath be taken in the face of the court, or out of it, before persons authorized to examine a matter depending in it ; as before the sheriff on a writ of enquiry, &c. or whether it be in relation to the merits of a cause, or in a collateral matter ; as where one, who offers himself to be bail for another, swears that his substance is greater than it is, &c. but neither a false oath in a mere private matter, as in making a bargain, &c. nor the breach of a promissory oath, whether public or private, are punishable as perjury. 1 *Hawk. P. C.* 173, and several authorities there cited.

3dly, The oath ought to be taken before persons lawfully authorized to administer it ; for if it be taken before persons acting merely in a private capacity, or before persons pretending to a legal authority of administering such oath, but having in truth no such authority, it is not punishable as perjury ; yet a false oath taken before commissioners, whose commission at the time is in strictness determined by the demise of the king, is perjury ; if taken before such time as the commissioners had notice of such demise ; for it would be of the utmost ill consequence in such case to make their proceedings wholly void. 1 *Hawk. P. C.* 173-4.

4thly, The oath ought to be taken by a person sworn to depose the truth ; and therefore a false verdict comes not under the notion of perjury, because the jurors swear not to depose the truth, but only to judge truly of the depositions of others ; but a man may be as well perjured by an oath in his own cause, as in an answer in chancery, or in an answer to interrogatories concerning a contempt, or in an affidavit, &c. as by an oath taken by him as witness in another's cause. 1 *Hawk. P. C.* 174.

5thly, It is not material, whether the thing sworn be in itself true or false, where the person who swears it in truth knows nothing of it. 1 *Hawk. P. C.* 175.

6thly, The oath must be taken absolutely and directly ; and therefore if a man only swears as he thinks, remembers, or believes, he cannot be guilty of perjury. 1 *Hawk. P. C.* 175.

7thly, The thing sworn ought to be some way material ; for if it be wholly foreign from the purpose, or altogether immaterial, and neither any way pertinent to the matter in question, nor tending to aggravate or extenuate the damages, nor likely to induce the jury to give the readier credit to the substantial part of the evidence, it cannot amount to perjury, because it is wholly idle and insignificant ; as where a witness introduces his evidence with an impertinent preamble of a story concerning previous facts, no way relating to what is material, and is guilty of a fallacy as to such facts ; but it seems a reasonable opinion, that a witness may be guilty

of perjury in respect to a false oath concerning a mere circumstance, if such oath have a plain tendency to corroborate the more material part of the evidence; as if in trespass for spoiling the plaintiff's close with the defendant's sheep, a witness swears that he saw such a number of the defendant's sheep in the close; and being asked how he knew them to be the defendant's, swears that he knew them by such a mark, which he knew to be the defendant's, wherein truth the defendant never used any such mark. *1 Hawk. P. C. 175.*

8thly, It does not seem material, whether the false oath were credited or not, or whether the party, in whose prejudice it was taken, were in the event any ways damaged by it; for the prosecution is not grounded on the damage to the party, but on the abuse of public justice. *1 Hawk. P. C. 177.*

How perjury is restrained and punished by statute.

STAT. 5 *Eliz. c. 9* [*A. D. 1562, intituled*] "An act for punishment of such person as shall procure or commit any wilful perjury."

"Where in the parliament holden at *Westminster* in the two and thirtieth year of the reign of the late king of famous memory, king *Henry* the Eighth, amongst other things, it was ordained, enacted and established, That no person or persons of what estate, degree, or condition soever he or they were, should from thenceforth unlawfully suborn any witness or witnesses, by letters, rewards, promises, or by any other sinister labour or means, for to maintain any matter or cause, or to the disturbance or hindrance of justice, or to the procurement or occasion of any manner of perjury, by false verdict, or otherwise, in any of the king's courts of chancery, the star-chamber, the *Whitehall*, or elsewhere within any of the king's dominions of *England* or *Wales*, or the marches of the same, where any person or persons have or from thenceforth should have authority by virtue of the king's commission, patent, or writ, to hold plea of land, or to examine, hear, or determine any title of lands, or any matter or witnesses concerning the title, right or interest of any lands, tenements, or hereditaments, upon pain of forfeiture for every such offence, ten pound, the one moiety thereof to be to the king and the other to the party that would sue for the same, as by the same estatute, amongst divers other things, more plainly it doth appear:

What punishment shall be inflicted upon persons who commit wilful perjury.
1 K. 4. 79.
2 Roll. 195.
244. 429.
12 Co. 101.
Larch 38.
Vaugh. 152.
A rehearsal of the Statute of 32 H. 8. c. 9, made against the subornation of witnesses. Herley 12, Godbolt 71, pl. 86.
Savil 43.
Most cases in law 179.

Sec. 2. "Sithence the making whereof, for that the said penalty is so small towards the offenders in that behalf, the said offence of subornation, and sinister procurement of false witnesses, hath nevertheless greatly increased and augmented, (2) and by reason of the wilful perjury committed by the same suborned witnesses, divers and sundry of the queen's majesty's subjects have sustained disherison and great impoverishment, as well of their lands and tenements, as also of their goods and chattels:

Sec. 3. "Be it therefore enacted by our sovereign lady the queen, by the assent of the lords spiritual and temporal, and the commons in this present

3 Bull. 147.
2 Le. 1198.
3 Leand. 201.

The penalty for procuring of wilful perjury. Ccke pla. 367. Rast. pla. 481. Golb. 191. pl. 140.

present parliament assembled, and by the authority of the same, That all and every such person and persons, which at any time after the tenth day of *April* next coming, shall unlawfully and corruptly procure any witness or witnesses by letters, rewards, promises, or by any other sinister and unlawful labour or means whatsoever, to commit any wilful and corrupt perjury; (2) in any matter or cause whatsoever, now depending, or which hereafter shall depend in suit and variance, by any writ, action, bill, complaint, or information, (3) in any wise touching or concerning any lands, tenements or hereditaments, or any goods, chattels, debts or damages; (4) in any of the courts before-mentioned, or in any of the queen's majesty's courts of record, or in any leet, view of frank-pledge or law-day, antient demean court, hundred-court, court-baron, or in the court or courts of the stannery in the counties of *Devon* and *Cornwal*; (5) or shall likewise unlawfully and corruptly procure or suborn any witness or witnesses, which shall from and after the said tenth day of *April* be sworn to testify *in perpetuam rei memoriam*, (6) that then every such offender or offenders, shall for his, her, or their said offence, being thereof lawfully convicted or attainted, lose and forfeit the sum of forty pounds.

The penalty enlarged by 2 Geo. 2, c. 25.

Secl. 4. " And if it happen any such offender or offenders, so being convicted or attainted, as aforesaid, not to have any goods or chattels, lands or tenements, to the value of forty pounds, that then every such person so being convict or attainted of any of the offences aforesaid, shall for his or their said offence, suffer imprisonment by the space of one half year, without bail or mainprize, and to stand upon the pillory the space of one whole hour, in some market-town next adjoining to the place where the offence was committed, in open market there, or in the market-town itself, where the offence was committed.

Secl. 5. " And that no person or persons being so convicted or attainted, to be from thenceforth received as a witness to be deposed and sworn in any court of record within any of the queen's highness dominions of *England*, *Wales*, or the marches of the same, until such times as the judgment given against the said person or persons shall be reversed by attain or otherwise; (2) and that upon every such reversal, the parties grieved, to recover his or their damages against all and every such person and persons as did procure the said judgment so reversed to be first given against them, or any of them, by action or actions to be sued upon his or their case or cases, according to the course of the common laws of this realm.

Secl. 6. " And be it further enacted by the authority aforesaid, That if any person or persons after the said tenth day of *April* next coming, either by the subornation, unlawful procurement, sinister persuasion, or means of any other, or by their own act, consent or agreement, wilfully and corruptly commit any manner of wilful perjury, by his or their deposition in any of the courts before-mentioned, or being examined *ad perpetuam rei memoriam*, that then every person or persons so offending, and being thereof duly convict or attainted by the laws of this realm, shall for his or their said offence, lose and forfeit twenty pounds, and to have imprisonment by the space of six months without bail or mainprize: (2) and the

The penalty of him that

oath of such person or persons so offending, from thenceforth not to be received in any court of record within this realm of *England* or *Wales*, or the marches of the same, until such time as the judgment given against the said person or persons shall be reversed by attainr, or otherwise; (3) and that upon every such reversal the parties grieved to recover his or their damages, against all and every such person and persons as did procure the said judgment so reversed to be given against them, or any of them, by action or actions to be sued upon his or their case or cases, according to the course of the common laws of this realm.

doth commit wilful perjury, Coke, pla. 164, 165. Cro. El. 201, 434. Coke 99.

Sec. 7. " And if it happen the said offender or offenders so offending, not to have any goods or chattels to the value of twenty pounds; that then he or they to be set on the pillory in some market-place within the shire, city, or borough where the said offence shall be committed, by the sheriff or his ministers, if it shall fortune to be without any city or town-corporate; (2) and if it happen to be within any such city or town-corporate, then by the said head officer or officers of such city or town-corporate, or by his or their ministers, and there to have both his ears nailed, and from thenceforth to be discredited and disabled for ever to be sworn in any of the courts of record aforesaid, until such time as the judgment shall be reversed, and thereupon to recover his damages in manner and form before-mentioned:

Sec. 8. " The one moiety of all which sums of money, goods and chattels to be forfeited in manner and form aforesaid, to be to the queen our sovereign lady, her heirs and successors; and the other moiety to such person or persons as shall be grieved, hindred or molested by reason of any the offence or offences before-mentioned, that will sue for the same by action of debt, bill, plaint, information, or otherwise, in any of the queen's majesty's courts of record, in the which no wager of law, effoin, protection, or injunction to be allowed.

Who shall have the forfeitures, and by what means.

Sec. 9. " And be it also enacted by the authority aforesaid, That as well the judge and judges of every of the said courts where any such suit is or shall be, and whereupon any such perjury is or shall happen to be committed, as also the justices of assizes and gaol-delivery in their several circuits, and the justices of the peace in every county within this realm, or in *Wales*, at their quarter-sessions, both within the liberties and without, shall have full power and authority, by virtue hereof, to enquire of all and every the defaults and offences perpetrated, committed, or done contrary to this act, by inquisition, presentment, bill or information before them exhibited, or otherwise, lawfully to hear and determine the same, and thereupon to give judgment, award process, and execution of the same, according to the course of the laws of this realm.

Who shall have authority to hear and determine the offences aforesaid. Cro. El. 105, 147, 148. 267, 428. Cro. Jac. 120. 133.

Sec. 10. " And be it further enacted by the authority aforesaid, That the justices of assize of every circuit within this realm, and elsewhere within the queen's dominions, shall in every county within their circuits, two times in the year, that is to say, in the time of their sittings, make open proclamation of this estatute, or of the effect thereof, to the intent no person or persons shall be ignorant or miscognisant of the penalties therein contained.

This statute shall be proclaimed at all assizes.

Sec.

This act shall not extend to any court ecclesiastical.
Rel. 39.

Sec. 11. "Provided also, that this act, nor any thing therein contained, shall not extend to any spiritual or ecclesiastical court or courts within this realm of *England* or *Wales*, or the marches of the same; but that all and every such offender or offenders as shall offend in form aforesaid, shall and may be punished by such usual and ordinary laws as heretofore hath been, and yet is used and frequented in the said ecclesiastical courts; any thing in this present act contained to the contrary in any wise notwithstanding.

Process served upon witnesses to testify.

1 Leon. 122.
March 18.

Cro. El. 136,
131.

Sec. 12. "Provided also, and be it further enacted by the authority aforesaid, That if any person or persons, upon whom any process out of any of the courts of record within this realm or *Wales*, shall be served to testify or depose, concerning any cause or matter depending in any of the same courts, (2) and having tendred unto him or them, according to his or their countenance or calling, such reasonable sums of money for his or their costs and charges, as having regard to the distance of the places, is necessary to be allowed in that behalf, (3) do not appear according to the tenor of the said process, having not a lawful and reasonable let or impediment to the contrary; (4) that then the party in making default, to lose and forfeit for every such offence, ten pounds, and to yield such further recompence to the party grieved, as by the discretion of the judge of the court out of the which of the said process shall be awarded, according to the loss and hindrance that the party which procured the said process shall sustain, by reason of the non-appearance of the said witness or witnesses; (5) the said several sums to be recovered by the party so grieved against the offender or offenders, by action of debt, bill, plaint or information, in any of the queen's majesty's courts of records, in which no wager of law, essoin, or protection to be allowed.

The authority to punish perjury, given by the statute of 1111 7, c. 25, saved.

Sec. 13. "Provided always, That this act, or any thing therein contained, shall not extend in any wise to restrain the power and authority given by act of parliament made in the time of king *Henry* the Seventh, to the lord chancellor of *England*, and others of the king's council for the time being, to examine and punish riots, routs, heinous perjuries, and other offences and misdemeanors; which lord chancellor, and others since the making of the said act, have most commonly used to hear and determine such matters in the court of *Westminster*, commonly called the star chamber; (2) nor to restrain the power or authority of the lord president and council in the marches of *Wales*, or of the lord president and council in the north, nor of any other judge, having absolute power to punish perjury before the making of this statute; (3) But that they and every of them shall and may proceed in the punishment of all offences heretofore punishable, in such wise as they might have done, and used to do, before the making of this act, to all purposes, so that they set not upon the offender or offenders less punishment than is contained in this act. (4) This act to continue unto the end of the next parliament."

5 *Coke* 39, made perpetual by 29 *El.* c. 5, and 21 *Jac.* 1, c. 28, *sec. 8.*

In the construction of this statute the following opinions have been holden:

That

That every indictment or action on this statute must exactly pursue the words of it; and therefore if it allege, that the defendant deposed such a matter *falso & deceptive*, or *falso & corrupte*, or *falso & voluntarie*, without saying, *voluntarie & corrupte*, it is not good, though it concluded, that *sic voluntarium & corruptum commisit perjurium contra formam statuti, &c.* Also it is said to be necessary expressly to shew, that the defendant was sworn; and that it is not sufficient to say, that *taleo per se sacro evangelio deposuit*. Cro. Eliz. 147. Hetl. 12. Savil 43. 2 Leon. 211. 1 Show. 198. Cro. Eliz. 105.

But there is no need to shew, whether the party took the false oath through the subornation of another, or of his own act, tho' the words of the statute are, "If persons by subornation, &c. or their own act, &c. shall commit wilful perjury;" for there being no medium between the branches of this distinction, they seem to be put in *ex abundanti*, and to express no more than the law would have implied, and therefore operate nothing. 3 Bullst. 147.

It hath been adjudged, that a man cannot be guilty of perjury within this statute, in any case wherein he may not possibly be guilty of subornation of perjury within it; for it is reasonable to give the whole statute the same construction; neither can it be well intended, that the makers of the statute meant to extend its purview farther as to perjury, which they seem to esteem the lesser crime, than subornation of perjury, which they seem to esteem the greater; and therefore since the clause concerning the subornation of perjury mentioning only matters depending by writ, bill, plaint or information, concerning hereditaments, goods, debts or damages, &c. extends not to perjury on an indictment or criminal information; the clause concerning perjury, tho' penned in more general words, hath been adjudged to come under the like restriction: also since the clause concerning subornation of perjury relates only to perjury by witnesses, that concerning perjury shall extend only to the like perjury; and therefore not to perjury in an answer in chancery; or in swearing the peace against a man; or in any presentment by a homager in a court baron; or in a wager of law, or in swearing before commissioners of inquiry of the king's title to land; and by the opinions of some, a false affidavit against a man in a court of justice is not within the statute; but if such affidavit be by a third person, and relate to a cause depending in suit before the court; and either of the parties in variance be grieved, hindred or molested, in respect of such cause, by reason of the perjury, it may strongly be argued that it is within the purview of the statute; also it seems the better opinion, that a false oath before the sheriff on a writ of inquiry of damages is within the statute. 5 Co. 99. Cro. Jac. 120. 3 Inst. 164. 2 Leon. 201. Yelv. 120. Cro. Eliz. 148. 2 Roll. Abr. 77.

It hath been collected from the clause which gives an action to the party grieved, that no false oath is within the statute, which doth not give some person a just cause of complaint; and therefore, that if the thing sworn be true, tho' it be not known by him that swears it to be so, the oath is not within the statute, because it gives no just cause of complaint.

Perjury and Subornation.

to the other party, who would take advantage of another's want of evidence to prove the truth; also from the same ground no false oath can be within the statute, unless the party against whom it was sworn suffered some disadvantage by it; and therefore in every prosecution on the statute, you must set forth the record wherein you suppose the perjury to have been committed, and must prove at the trial, that there is such a record, either by actually producing it, or an attested copy; also in the pleadings you must not only set forth the point wherein the false oath was taken, but must also shew how it conduced to the proof or disproof of the matter in question; and if an action on the statute be brought by more than one, you must shew how the perjury was prejudicial to each of the plaintiffs; but it seems that a perjury, which tends only to aggravate or extenuate the damages, is as much within the statute as a perjury that goes directly to the point in issue; and a perjury, in a cause wherein an erroneous judgment is given, is a good ground of prosecution upon the statute till the judgment be reversed. 1 *Hawk. P. C.* 181.

If perjury be committed, that is within this statute, but concludes not *contra formam statuti*; yet it is a good indictment at common law, but not to bring him within the corporal punishment of this statute. 2 *Hale's Hist. P. C.* 191-2.

By STAT. 8 *Geo. 1, c. 6, sect. 2*, Quakers making solemn affirmation wilfully and corruptly, shall suffer as in cases of perjury. See title **Oaths**, page 236.

STAT. 2 *Geo. 2, c. 25*. See this act under title **Forgery**, page 240.

STAT. 23 *Geo. 2, c. 11*. [*A. D. 1750, intituled*] "An act to render prosecutions for perjury, and subornation of perjury, more easy and effectual."

What shall be
sufficient in
indictments
of perjury.

"Whereas by reason of difficulties attending prosecutions for perjury, and subornation of perjury, those heinous crimes have frequently gone unpunished, whereby wicked and evil disposed persons are daily more and more emboldened to commit the same, to the great dishonour of God and manifest let and hindrance of justice; for remedy whereof, be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That in every information or indictment to be prosecuted against any person for wilful and corrupt perjury, it shall be sufficient to set forth the substance of the offence charged upon the defendant, and by what court or before whom the oath was taken (averring such court, or person or persons, to have a competent authority to administer the same) together with the proper averment or averments to falsify the matter or matters wherein the perjury or perjuries is or are assigned; without setting forth the bill, answer, information, indictment, declaration, or any part of any record or proceeding either;

either in law or equity, other than as aforesaid; and without setting forth the commission or authority of the court, or person or persons before whom the perjury was committed; any law, usage, or custom to the contrary notwithstanding.

Sec. 2. "And be it further enacted by the authority aforesaid, That in every information or indictment for subornation of perjury, or for corrupt bargaining or contracting with others to commit wilful and corrupt perjury, it shall be sufficient to set forth the substance of the offence charged upon the defendant, without setting forth the bill, answer, information, indictment, declaration, or any part of any record or proceeding either in law or equity; and without setting forth the commission or authority of the court, or person or persons before whom the perjury was committed, or was agreed or promised to be committed; any law, usage, or custom to the contrary notwithstanding." Informations, &c. for subornation of perjury.

Sec. 3. "And, the better to prevent great offenders from escaping punishment by reason of the expence attending such prosecutions; be it further enacted by the authority aforesaid, That it shall and may be lawful to and for any of his majesty's justices of assize, or *nisi prius*, or general gaol delivery, or of any of the great sessions of the principality of Wales, or of the counties palatine; and they are hereby authorized (sitting the court, or within twenty-four hours after) to direct any person examined as a witness upon any trial before him or them, to be prosecuted for the said offence of perjury, in case there shall appear to him or them a reasonable cause for such prosecution, and that it shall appear to him or them proper so to do; and to assign the party injured, or other person undertaking such prosecution, council, who shall and are hereby required to do their duty without any fee, gratuity, or reward, for the same: and every such prosecution, so directed as aforesaid, shall be carried on without payment of any tax or duty, and without payment of any fees in court, or to any officer of the court, who might otherwise claim or demand the same: and the clerk of assize, or his associate or prothonotary, or other proper officer of the court (who shall be attending when such prosecution is directed) shall, and is hereby required, without any fee or reward, to give the party injured, or other person undertaking such prosecution, a certificate of the same being directed, together with the names of the council assigned him by the court; which certificate shall in all cases be deemed sufficient proof of such prosecution having been directed as aforesaid, provided that no such direction or certificate shall be given in evidence upon any trial to be had against any person upon a prosecution so directed as aforesaid." Justices of assize, &c. may direct prosecutions against persons examined before them, being guilty of perjury, and assign the prosecutor council. The prosecution to be carried on without fees. The clerk of assize to give the prosecutor a certificate.

Petition.

PETITION, (*Petitio*) hath a general signification for all kinds of supplications made by an inferior to a superior and especially to one having jurisdiction. *S. P. C. cap. 15.* And it is used for that remedy which the subject hath to help a wrong done by the king, who hath a prerogative not to be sued by writ: in which sense it is either general, that the king do him right and reason, whereupon follows a general indorsement upon the same, let right be done the party: or it is special, when the conclusion and indorsement are special, for this or that to be done, &c. *Staundf. Prærog. c. 22.*

STAT. 13 Car. 2, c. 5, [A. D. 1661, intituled] “An act against tumults and disorders, upon pretence of preparing or presenting public petitions, or other addresses, to his majesty, or the parliament.”

Tumultuous and disorderly preparing petitions, a great occasion of the late wars and calamities.

“Whereas it hath been found by sad experience, That tumultuous and other disorderly soliciting, and procuring of hands by private persons to petitions, complaints, remonstrances and declarations, and other addresses to the king, or to both, or either houses of parliament, for alteration of matters established by law, redress of pretended grievances in church or state, or other public concerns, have been made use of, to serve the ends of factious and seditious persons gotten into power, to the violation of the public peace, and have been a great means of the late unhappy wars, confusions and calamities in this nation; for preventing the like mischiefs for the future,

No person after the first of Aug. 1661, shall solicit or procure any petition, &c. for altering any established law in church or state.

Noy 101.
2 Cr. 37.
Moor 755.
pl. 1043.

SECT. 2. “Be it enacted by the king’s most excellent majesty, by and with the consent of the lords and commons assembled in parliament, and by the authority of the same, That no person or persons whatsoever, shall from and after the first of *August*, one thousand six hundred sixty and one; solicit, labour or procure the getting of hands or other consent of any persons above the number of twenty or more, to any petition, complaint, remonstrance, declaration, or other address to the king, or both, or either of the houses of parliament, for alteration of matters established by law in church or state, unless the matter thereof have been first consented unto, and ordered by three or more justices of the county, or by the major part of the grand jury of the county or division of the county where the same matter shall arise, at their public assizes, or general quarter-sessions, or if arising in *London*, by the lord mayor, aldermen and commons in common-council assembled; (2) and that no person or persons whatsoever shall repair to his majesty, or both, or either of the houses of parliament, upon pretence of presenting, or delivering any petition, complaint, remonstrance or declaration, or other addresses, accompanied with excessive number

number of people, not at any one time with above the number of ten persons; upon pain of incurring a penalty not exceeding the sum of one hundred pounds in money, and three months imprisonment without bail or mainprize for every offence; which offence to be prosecuted at the court of king's bench, or at the assizes, or general quarter-sessions, within six months after the offence committed, and proved by two or more credible witnesses.

Seet. 3. "Provided always, That this act, or any thing therein contained, shall not be construed to extend to debar or hinder any person or persons, not exceeding the number of ten aforesaid, to present any public or private grievance or complaint to any member or members of parliament after his election, and during the continuance of the parliament, or to the king's majesty, for any remedy to be thereupon had; nor to extend to any address whatsoever to his majesty, by all or any of the members of both or either houses of parliament, during the sitting of parliament, but that they may enjoy their freedom of access to his majesty, as heretofore hath been used."

Pewter and other Metals.

STAT. 19 *Hen. 7, c. 6*, [*A. D. 1503, intituled*] "Pewterers walking."

"To the king our sovereign lord, and to the noble lords spiritual and temporal, and commons, in this present parliament assembled, humbly and lamentably shewn and complain unto your most abundant grace, your humble subjects the pewterers and brasiers of your city of *London* and *York*, and of all other places of this your realm, That where many simple and evil disposed persons of this your realm of *England*, using the said crafts, daily go about this your realm from village, from town, and from house to house, as well in woods and forests, as other places, to buy pewter and brass; (2) and that knowing thieves and other pickers that steal as well pewter and brass belonging to your highness, and under your mark, and to the lords spiritual and temporal, as to other your subjects of this your realm, bring such stolen vessels unto them in such hid places to sell, and sell it for little or nought, and about they bring it into privy places, or into corners of cities or towns, and there sell much part of it to strangers, which carry it over the sea by stealth: (3) also the said persons so going about, and divers other using the said crafts, use to make new vessels, and mix good metal and bad together, and make it naught, and sell them for

Several evil practices used by pewterers and brasiers.

for good stuff, where indeed the stuff and metal thereof is not worth the fourth part that it is sold for, to the great hurt, deceit, and loss of your subjects: (4) also divers persons using the said crafts, have deceivable and untrue beams and scales, that one of them would stand even with twelve pound weight at one end, against a quarter of a pound at the other end, to the singular advantage of themselves, and to the great deceit and loss of your subjects, buyers and sellers with them. (5) For reformation of the premises, it would please your highness of your most abundant grace, with the advice of the lords spiritual and temporal, and the commons, in this present parliament assembled, and by authority of the same, to enact and establish, That no person or persons using the said crafts of pewterers and brasiers, from henceforth shall sell or change any pewter or brass, new or old, at any place or places within your realm, but only in open fairs or markets, or in their own dwelling-houses, but if they be desired by the said buyers of such ware, upon pain of forfeiture to our sovereign lord the king for every such default x. li. (6) also that by the same authority it may be enacted and established, that no person or persons, of what condition or degree soever he or they be of, from henceforth within the said city of *London* and *York*, or without, either cast or work any pewter vessel or brass at any place or places within this your realm, but that it be as good fine metal as the pewter and brass cast and wrought after the perfect goodness of the same within the city of *London*, and by the statutes of the same ought to be, upon pain of forfeiture of all such pewter and brass so cast and wrought of worse pewter or brass than ought to be wrought in the same cities; that one half of every such forfeiture to be to the use of your highness, and that other half to the use of the finders thereof. (7) Provided alway, that this forfeiture in no wise stretch ne extend to brass or pewter being in the possession of any person other than the workers of the same, or such as have the same to sell, and being of the crafts or mysteries. (8) Also that it may by the same authority be enacted and established, that no manner person or persons, of what degree or condition soever he or they be of, from henceforth make no hollow wares of pewter, that is to say, salts and pots that are made of pewter called ley-metal, but that it may be after the assise of pewter ley-metal wrought within the city of *London*; (9) and that the makers of such wares shall mark the same wares with several marks of their own, to the intent that the makers of such wares shall avow the same wares by them (as above said) to be wrought; (10) and that all and every such wares not sufficiently made and wrought, and not marked in form above said, found in the possession of the same maker or seller, to be forfeited; (11) and if the same ware be sold, the said maker to forfeit the value of the same ware so unlawfully wrought and sold; the one half of the said wares, or the moiety of the value thereof, to be to the use of your highness, and the other half to be to the use of the finder or finders, or searchers thereof. Also that it may be by the same authority enacted and established, that if any person or persons hereafter using, buying, and selling of pewter or brass, that hereafter occupy any deceivable or false beams or weights of the said wares,

Of what
goodness
pewter and
brass ought to
be.

Of what assise
hollow ware
of pewter
made of ley-
metal shall be.

The makers
shall set on
their marks.
The forfeiture
for defaults.
The penalty
for using of
false beams
and weights
in selling or
buying of
pewter and
brass.

wares, and every such person or persons using or occupying such deceitful and untrue beams or weights, to forfeit 20*s.* the one half to the king and the other half to the party that therefore shall sue by action of debt; (12) and that in the said action no protection nor essoin shall be allowed; and also the said party so offending shall forfeit his beams to him that shall seize it; (13) and if the said offender or offenders be not sufficient to pay the said sum or sums by them so forfeited, that then it shall be lawful to the mayors, bailiffs, or other head-officers of such place or places where any such offender or offenders shall be found, to put them in the stocks, and them so to keep till the next market-day next adjoining, and in the market place to put them in the pillory all the market-time. (14) And furthermore, that it be lawful by the said authority, that the master and wardens of the said craft of pewterers, within every city and borough of this realm where such wardens are, and, where no such wardens are, the head and governors of the same city or borough, to appoint certain persons most expert in the knowledge of the same, to make search within the said cities or boroughs where they dwell. (15) And over this, the justices of peace within every shire, at their general session holden at *Michaelmas*, shall assign and appoint two certain persons, having experience therein, to make search in the premises in every part of that shire, as well within the franchise as without, saving in cities or boroughs where searchers be appointed by the heads and governors of the same; (16) and that of all such unlawful pewter or brass as the said searchers shall find, that one half to the use of your grace, and the other half to the said searchers; (17) and that in the default of the said masters and wardens of the said occupations not searching in form as is aforesaid, and whereby that any such unlawful metal is cast or made, or unlawful weights used, that then it shall be lawful to any person or persons having sufficient cunning and knowledge in the said occupations, by oversight of the mayors, bailiffs, and head-officers of the said cities and boroughs, to search all the said places, and to put the said authority and act in execution in form aforesaid. (18) Provided always, that this present act continue and endure to the next parliament, and no longer."

The punishment of the offender if he be not able to pay the money forfeited.

Searchers of pewter and brass within a city or borough, to be appointed by justices of the peace.

Made perpetual by 2 H. 8, c. 7, f. 6. See 25 H. 8, c. 9. 33 H. 8, c. 4.

STAT. 4 *Hen. 8, c. 7, [A. D. 1512, intituled]* "An act made for pewterers, and true weights and beams."

"To the king our sovereign lord, and the honourable the lords spiritual and temporal, and the commons, in this present parliament assembled: forasmuch as a certain act was made and established in the parliament holden at *Westminster* the nineteenth year of the reign of the late most famous king your father, *Henry the Seventh* (whom God pardon) concerning pewterers, and brassers hawking and walking about the countries, and also concerning false beams, scales, and weights, with a provision for casting of fine metal, and of perfect goodness; which act was made to endure to the next parliament, the tenor whereof hereafter enlueth:

The tenor of
the statute of
19 H. 7, c. 6,
concerning
pewterers.

Señ. 2. " That where many simple and evil disposed persons of this your realm of *England* (using the said crafts) daily go about this your realm from village, from town, and from house to house, as well in woods and forests, as other places, to buy pewter and brass, (2) and that knowing thieves, and other pickers, that steal as well pewter and brass belonging to your highness, and under your mark, and to the lords spiritual and temporal, as to other your subjects of this your realm, bring such stolen vessels unto them in such hid places to sell, and sell it for little or nought, and about they bring it to private places, or into corners of cities or towns, and there sell much part of it to strangers, the which carry it over the sea by stealth; (3) also the said persons (so going about) and divers other using the said crafts, use to make new vessels, and to mix good metal and bad together, and make it nought, and sell it for good stuff, where indeed the stuff and metal thereof is not worth the fourth part that it is sold for, to the great hurt, deceit, and loss of your subjects; also divers persons using the said crafts, have deceivable and untrue beams and scales, that one of them will stand even with twelve pounds weight at the one end, against a quarter of a pound at the other end, to the singular advantage of themselves, and to the great deceit and loss of your subjects, buyers and sellers with them: (4) for reformation of the premises, it would please your highness of your most abundant grace, with the advice of your lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, to enact and establish, That no person or persons, using the said crafts of pewterers and brasiers, from henceforth shall sell or change any pewter or brass, new or old, at any place or places within this your realm, but only in open fairs or markets, or in their own dwelling-houses, but if they be desired by the said buyers of such wares, upon pain of forfeiture to our sovereign lord the king for every such default ten pounds.

In what places
only pewter
or brass shall
be sold or
changed.

By 25 H. 8, c. 9,
f. 6, the in-
former shall
have a moiety.

Of what good-
ness pewter
and brass
ought to be.

Señ. 3. " Also by the same authority it may be enacted and established, That no person or persons, of what condition or degree soever he or they be, from henceforth, within the cities of *London* and *York*, or without, either cast or work any pewter vessels or brass at any place or places within this your realm, but that it be as good fine metal as is the pewter and brass cast and wrought after the perfect goodness of the same within the city of *London*, and by the statutes of the same ought to be, upon pain of forfeiture of all such pewter and brass so cast and wrought of worse pewter or brass than ought to be wrought in the same cities; the one half of every such forfeiture to be to the use of your highness, and the other half to the use of the finders thereof.

Hollow wares
made of pew-
ter ley-metal.

Señ. 4. " Provided alway, That this forfeiture in no wise stretch, ne extend to brass or pewter being in the possession of any person, other than the workers of the same, or such as have the same to sell, and being of the craft or mystery. (2) Also that it may by the same authority be enacted and established, that no manner of person or persons, of what degree or condition soever he or they be, from henceforth make no hollow wares of pewter, that is to say, salts and pots that is made of pewter called ley-metal;

ley-metal ; but that it may be after the affize of pewter ley-metal wrought within the city of *London* ; (3) and that the makers of such wares shall mark the same with several marks of their own, to the intent that the makers of such wares shall avow the same wares by them (as is above said) to be wrought ; (4) and that all and every such wares not sufficiently made and wrought, and not marked in form aforesaid, found in the possession of the same maker or seller, to be forfeited ; and if the same ware be sold, the said maker to forfeit the value of the same so unlawfully wrought and sold ; the one half of the said wares, or the value thereof, to be to the use of your highness, and the other half to be to the use of the finder or searchers of the same.

The makers of pewter vessels shall mark the same.

Sett. 5. “ Also that it may by the same authority be enacted and established, That if any person or persons hereafter using, buying, and selling of pewter and brass, that hereafter occupy any deceivable or false beams or weights of the said wares, that every such person or persons using or occupying such deceivable and untrue beams or weights, to forfeit twenty shillings, the one half to the king, and the other half to the party that therefore shall sue by action of debt ; (2) and that in the said action no protection nor essoin shall be allowed ; and also the said party so offending shall forfeit his beam to him that shall seize it ; (3) and if the said offender or offenders be not sufficient to pay the said sum or sums by them so forfeited, that then it shall be lawful to the mayors, bailiffs, or other head-officers of such place or places where any such offenders shall be found, to put them in the stocks, and them so to keep till the next market-day next adjoining, and in the market-place to put them on the pillory all the market-time.

The penalty for using false beams and weights about pewter or brass.

Sett. 6. “ And furthermore, that it be lawful by the said authority, that the master and wardens of the said craft of pewterers, within every city and borough of this realm, where such wardens are, and, where no such wardens are, the head officers or governors of the same city or borough, to appoint certain persons most expert in knowledge of the same, to make search within the said cities or boroughs where they dwell. (2) And over this, the justices of peace within every shire, at their general session holden at *Michaelmas*, shall assign and appoint two certain persons, having experience therein, to make search in the premisses in every part of that shire ; as well within the franchises as without, saving in cities or boroughs where searchers be appointed by the heads or governors of the same ; (3) and that of all such unlawful pewter or brass as the said searchers shall find, the one half shall be to the use of your grace, and the other half to the said searchers ; (4) and that in the default of the said masters and wardens of the said occupations not searching in form as is aforesaid, and whereby that any such unlawful metals is cast or made, or unlawful weights used, that then it shall be lawful to any person or persons having sufficient cunning and knowledge in the said occupations, by oversight of the mayor, bailiffs, or head officers of the said cities, boroughs, and towns, to search all the said places, and to put the said authority and act in execution in

Searchers of pewter and brass shall be appointed.

The statute of form aforefaid. (5) Pleaseth it therefore your grace and wifdoms, 19 H. 7, c. 6, confirmed and made perpetual, enacted, and eftablifhed by the lords fpiritual and temporal, and commons, in this prefent parliament affembled, and by the authority of the fame, that the faid act may endure for ever.

Señ. 7. “ And over that it be enacted by the faid authority, that if any untrue or deceivable metal, or workmanfhip, of tin or pewter, be founden either in platters, chargers, difhes, faucers, pottingers, trenchers, bafons, flaggons, pottles, pots, faltfels, goblets, fpoons, cruets, or candlefticks, or any other fuch wares of tin or pewter, wherefoever it be caft, made, or wrought within this realm or without, and brought to be fold within the fame realm; that then it fhall be lawful for the mayor of the city of *London*, and the mafter and wardens of the craft of pewterers (of the faid city for the time being) and their deputies, to have fearch of the fame within the city of *London*, and the fuburbs of the fame; (2) and that in all other cities, boroughs, and towns, where any wardens be or fhall be, the mayors, bailiffs, or head officers and wardens to have like authority; (3) and where no wardens be, then the head officers or governors of the fame cities, boroughs, and towns, to appoint certain perfons moft expert and cunning in knowledge of the fame, to make fearch within the faid cities, boroughs, and towns where they dwell; (4) and if any fuch new wares wrought of tin and pewter, as is aforefaid, be found defective, and being in the poffeffion of the feller, that then the fame perfon or perfons that putteth any fuch new wares of pewter to fale, fhall forfeit the fame wares, the one half to the ufe of our fovereign lord the king, and the other half to the fearchers or finders of the fame.

Searchers of tin or pewter veffels fhall be appointed.

This act fhall not be prejudicial to the king's grants of liberties.

25 H. 8, c. 9, Made perpetual 33 H. 8, c. 4, f. 6.

Señ. 8. “ Provided alway, That this act concerning the forfeiture be not prejudicial nor hurtful to any perfon or perfons having grant of our fovereign lord the king, or of any of his noble progenitors, by his letters patents of fuch forfeiture, but that they and every of them fhall and may enjoy the fame according to their former grants and liberties.

STAT. 25 *Hen. 8*, c. 9, [*A. D.* 1533, intituled,] “ A bill concerning pewterers.”

How pewterers fhall ufe their trade.

“ In their moft lamentable wife shewen, and piteoufly complaining unto the king's moft royal majefty, and to this his moft high court of parliament, the king's moft humble, poor, and obedient fubjects, the mafter, wardens, and poor fellowfhip of the craft and myftery of the pewterers, as well of the city of *London*, as of all other places within this realm of *England*, that where the faid craft or myftery before this time hath been one of the beft handicrafts within this realm, which hath only grown and continued by mean of divers good acts and ftatutes made for the true exercise of the fame, whereof one was made in the nineteenth year of the reign of the king's moft renowned father (whose foul God pardon) and one other was made in the fourth year of the king's moft victorious reign, concerning

19 H. 7, c. 6.

4 H. 8, c. 7.

concerning the crafts of pewterers and brasiers, of and for the true making, mixing, and selling of good and true pewter and brasen vessels, and also for using and exercising of true weights and beams, to be occupied by the sellers of any such pewter or brasen vessels within this realm, so that none of the king's subjects, nor any other person, should by any sale of any false, mixed, brasen or pewter vessel, or any untrue weights, be deceived, as by the said statutes more plainly doth appear; (2) which good statutes, duly put in execution, hath caused the said craft to increase and multiply, to the great profit and utility of a great number of the king's subjects, and the commodity of pewter vessel much to be had in reputation in all strange regions and countries, until now of late divers evil disposed persons, being the king's subjects born, which have been apprentices, and brought up in the exercise of the said craft of pewterers, have now of late, for their singular lucre, repaired into strange regions and countries, and there do exercise the said craft of pewterers, teaching strangers not only the cunning of mixing and forging of all manner of pewter vessel, but also do teach all things belonging to the said craft of pewterers, by mean whereof there is not only brought daily into this realm, out of strange regions, to be sold, great number of things made of pewter, untrue mixed, and made of tin, wherewith the king's subjects be daily deceived, and the people of strange countries greatly instructed in the cunning of the said craft of pewterers, so that thereby not only a great number and quantity of pewter vessel, and other things of pewter, made in divers sorts and fashions, amounting to a great value, which was daily and continually wont to be carried and conveyed out of this realm by merchants, into strange regions and countries, there to be sold and vended; whereby the commodity of tin, made into pewter vessel, which hath been had in great estimation, as things very necessary and commodious, and the king's customs thereby much advanced, is now like utterly to cease and decay, and not to be esteemed as heretofore hath been, but also the said craft of pewterers, which at this day setteth and keepeth in work and occupation a great number of people, shall be utterly undone, and a great multitude of the king's natural subjects thereby fall into idleness, to the great impoverishment of this realm, if speedy remedy for the redress of the premisses be not provided; (2) in tender consideration whereof, and for reformation of the premisses, it may please the king's highness, by the assent of the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, to ordain and enact, That no person or persons hereafter, at any time now inhabiting, or which hereafter shall inhabit within this realm, shall buy, or otherwise take by exchange for other wares, any manner wares made, or hereafter to be made out of this realm, of tin, or mixt with tin, as platters, dishes, saucers, pots, basons, ewers, flaggons, goblets, salts, salt-sellers, spoons, or any other thing made of tin or pewter, as aforesaid, whatsoever it be, upon pain of forfeiture of the same ware, in whose hands soever it may be found or taken, and also lawful money current in this realm, to the full

The cause why the trade of pewterers did increase, and now doth decay in this realm.

No person shall buy any wares made of tin out of the realm.

value thereof, the one half of the same forfeiture to be to the use of the king's highness, the other half to be to the use of the finders of the same.

Officers may search and seize wares brought into this realm contrary to this statute.

Seet. 2. " And furthermore be it enacted, That it shall be lawful to the master and wardens of the said craft of pewterers, as well within the city of *London*, as within every other city, borough, and town of this realm, where such wardens be, and where no such wardens be, to the head officer or governor, head officers or governors of the same city, borough, or town, for the time being, to appoint divers persons most expert in knowledge of the same, to make search and seizure, and to take into their hands and possessions all such wares as hereafter shall be brought contrary to the true intent and effect of this present act, in whose soever hands or possession any such shall be found.

No pewterer shall take a stranger born to be apprentice or journeyman.
Rep. 5 El. c. 4.

No stranger born shall work any pewter or tin.

Seet. 3. " And also be it enacted by the authority abovesaid, That no person or persons occupying the said craft or occupation of pewterers within this realm, shall set on work or retain in his or their service, any person or persons to be his or their apprentice or journeyman, being stranger-born out of this realm, upon pain to forfeit for every such apprentice and journeyman, ten pounds sterling; (2) and that no stranger born out of this realm, shall occupy, exercise, or use, from the feast of *Pentecost* next coming, the said craft of pewterers, ne work any manner of vessel, or other ware aforesaid, to be made of tin or pewter, within any place or places of this realm, upon pain of forfeiture of ten pounds sterling, and also upon pain of forfeiture of the same pewter or tin so wrought, in whose hands soever it may be found or taken.

No pewterer shall teach his trade in a foreign country.

Seet. 4. " And also be it enacted by authority aforesaid, That no person or persons being born within this realm, occupying or exercising the said craft of pewterers, shall at any time hereafter resort into any strange regions or countries, there to use, teach, or exercise the said craft of pewterers, upon pain to lose the privilege and benefit of an *Englishman*.

Seet. 5. " And in case any of the king's subjects at this present time being, dwelling in any strange country or region, and there occupying the same craft of pewterers, do not repair into this realm within three months next after request and warning to him to be given, by writing, sealed with the common seal of the wardens of the said craft within the city of *London*, and here in this realm continually from henceforth dwell and inhabit, that then, and from thenceforth, he shall be reputed and taken as no *Englishman*, but shall stand, and be from thenceforth out of the king's protection.

Seet. 6. " And forasmuch as sundry evil disposed persons, which commonly been called hawkers, by authority of the king's letters patents, or placard, do not only go about from place to place within this realm, using, buying, and selling of brass and pewter, and by colour and pretence of the same licences or placards, use unlawful and deceivable weights and beams, but also do use to sell both brass and pewter which is not good, not truly nor lawfully mixt nor wrought, to the great deceit of the king's
true;

true liege people, contrary to the form and effect of the said good act and statute made in the said fourth year of the king's most noble reign : (2) be it therefore enacted by authority of this present parliament, That all such licences and placards heretofore had, made, or granted, to any such person or persons, contrary to the true meaning, form, and effect of this statute, shall be from henceforth, by authority of this present parliament, clearly void and of none effect. (3) And whereas in the said act of parliament, concerning the craft of pewterers and brasiers, made in the said fourth year, for divers causes and considerations in the same act contained, amongst other things it is expressed, That no other person or persons using the said craft of pewterers or brasiers, should from thenceforth sell or change any pewter or bras, new or old, at any place or places within this realm, but only in open fairs or markets, or in their own dwelling-houses, but if they were desired by the buyers of such wares, upon pain of forfeiting for every such default ten pounds. (4) Forasmuch as the same forfeiture is to the only use of the king's highness, and that any party searching or finding the same, is not intituled to have any benefit thereby, it hath not been known that any person or persons have taken any pain to search, or make any enquiry thereof, by reason whereof divers, and many evil disposed persons, using, buying, and selling both of bras and pewter, and not regarding the said good act, neither the said penalty, daily go about from village to village, town to town, and from house to house, to sell such pewter and bras which is not good, and also use deceivable weights and beams, as they did before the making of the said act, to the great hurt, and deceit of the king's true liege people and subjects : (5) wherefore be it enacted by the authority aforesaid, That as well the moiety of the said forfeiture of ten pounds, limited in the said statute made in the said fourth year, as also the moiety of all other forfeitures before expressed, and every of them, be, and shall be to the use of the king's highness, his heirs, and successors, and the other moiety of the same forfeitures, and every of them, to the use of him or them that shall seize, find, or present the said forfeitures, or any of them, or that shall sue for the same in any competent court or courts within this realm, by action of debt, bill, plaint, or information, wherein the defendant shall in no wise be admitted to wage his law, nor any protection or essoin to any person or persons which shall be impeached to have offended contrary to the form and effect of this estatute, shall be allowable. (6) This act to endure to the last day of the next parliament.

Licences and placards made to hawkers for pewter shall be void.

Pewter shall be sold in fairs and markets, and in the owners houses, and not elsewhere.

Who shall have the forfeitures, and by what means they shall be recovered.

Made perpetual, 33 H. 8. c. 4.

STAT. 33 Hen. 8, c. 4, [A. D. 1541; intituled] " The pewterers bill."

" Where in the parliament begun at London the third day of November; 25 H. 8, c. 9. in the twenty-first year of the reign of the king our sovereign lord, and from thence adjourned to Westminster, and there holden, and from that time continued by divers prerogations unto the fifteenth day of January, the twenty-fifth year of his most noble reign, it was ordained,

None shall buy wares made of tin out of the realm.

dained and established by the assent of the king's majesty, his lords spiritual and temporal, and the commons, in the said parliament then assembled, and by authority of the same, That no person nor persons from that time then inhabiting, or which after that time should inhabit within this realm, should buy or otherwise take by exchange for other wares, any manner wares made or hereafter to be made out of this realm, of tin, or mixed with tin, as platters, dishes, saucers, pots, basins, ewers, flaggons, goblets, salts, saltcellers, spoons, or any other thing made of tin or pewter as aforesaid, whatsoever it were, upon pain of forfeiture of the same wares, in whose hands soever it might be found or taken, and also lawful money current in this realm to the full value thereof, the one half of the same forfeiture to be to the use of the king's highness, and the other half to be to the use of the finders of the same.

Searchers of
wares made of
tin brought
into this
realm.

Secl. 2. " And further it was enacted, That it should be lawful to the master and wardens of the pewterers, as well within the city of *London*, as within every other city, borough, or town within this realm, where such wardens were, and, where no such wardens were, to the head officer or governor, head officers or governors of the same city, borough, or town for the time being, to appoint divers persons most expert in knowledge of the same, to make search and seizure, and to take into their hands and possession all such wares as thereafter should be brought contrary to the true intent and effect of the said act, in whosoever hands or possessions any such should be found.

No pewterer
shall take a
stranger born
to be his ap-
prentice, &c.

Secl. 3. " And it was also enacted by the authority aforesaid, That no person or persons occupying the said craft or occupation of pewterers within this realm, should set on work or retain in his or their service, any person or persons to be his or their apprentice or journeyman, estranger born out of this realm, upon pain to forfeit for every such apprentice and journeyman, ten pounds sterling; (2) and that no stranger born out of this realm should occupy, exercise, or use, from the feast of *Pentecost* then next coming, the said craft of pewterers, ne work any manner of vessels, or other ware aforesaid, to be made of tin or pewter, within any place or places of this realm, upon pain of forfeiture of ten pounds sterling, and also upon pain of forfeiture of the same pewter or tin so wrought, in whose hands soever it shall be found or taken.

No stranger
born shall
work any
pewter or tin.

No pewterer
shall teach his
trade in a fo-
reign realm.

Secl. 4. " And it was further enacted by the said authority, That no person nor persons being born within this realm, then occupying or exercising the said craft of pewterers, should from thenceforth resort into any strange regions or countries, there to use, teach, or exercise the said craft of pewterers, upon pain to lose the privilege and benefit of an *Englishman*. (2) And if in case any of the king's subjects, at that time dwelling in any strange country or region, and there occupying the said craft of pewterers, did not repair into this realm within three months next after request and warning to him given by writing, sealed with the common seal of the wardens of the said craft within the said city of *London*, and here in this realm continually from henceforth dwell and inhabit,

that

that then and from henceforth he should be reputed and taken as no *Englishman*, but should stand and be from henceforth out of the king's protection.

Stat. 5. " And it was then further enacted, That where sundry evil disposed persons, which commonly were called hawkers, by authority of the king's letters patents, or placard, did not only go about from place to place within this realm, using, buying, and selling of brasse and pewter, and by colour and pretence of the same licences or placards did not only use unlawful and deceivable weights and beams, but also did use to sell both brasse and pewter which was not good, nor truly or lawfully mixed or wrought, to the great deceit of the king's true liege people, contrary to the form and effect of a good and laudable act and statute made in the fourth year of the king's said most noble reign, (2) That all such licences and placards afore that time had, made, or granted to any such person or persons, contrary to the true meaning, form, and effect of the said statute, should be from thenceforth, by the authority of the said parliament, clearly void and of none effect. (3) And whereas in the said act of parliament concerning the said craft of pewterers and brasiers, made in the said fourth year, for divers causes and considerations in the same act contained, among other things it was expressed, That no person nor persons using the said craft of pewterers or brasiers should from henceforth sell or change any pewter or brasse, new or old, at any place or places within this realm, but only in open fairs and markets, or in their own dwelling houses, unless they were desired by the buyers of such wares upon pain of forfeiture for every such default ten pounds. (4) And so then the same forfeiture being to the only use of the king's highness, and the party searching or finding the same was not intitled to have any benefit thereby, it was not known that any person or persons had taken any pains to ensue or make any enquiry thereof; by reason whereof divers and many evil disposed persons then using, buying, and selling as well of brasse as pewter, and not regarding the said good act, nor the said penalty, went daily about from village to village, town to town, and from house to house, to sell such pewter and brasse which was not good, and also used deceivable weights and beams, as they did before the making of the said act, to the great hurt and deceit of the king's true liege people and subjects. (5) Wherefore it was enacted by the authority of the said parliament, That as well the moiety of the said forfeiture of ten pounds, limited in the said statute made in the said fourth year, as also the moiety of all other forfeitures and penalties expressed and specified in the said acts, and every of them, should be to the use of the king's highness, his heirs and successors, and the other moiety of the same forfeitures and penalties, and every of them, to the use of him or them that would seize, find, or present the said forfeitures, or any of them, or that would sue for the same in any competent court or courts within this realm, by action of debt, bill, plaint, or information, wherein the defendant should in no wise be admitted to wage his law, or any protection or esoin to any person or persons which should be impeached to have offended

Licences and placards made to hawkers of pewter shall be void.

4 H. 8. c. 7.

Pewter and brasse shall be sold only in fairs or markets, or in their own houses.

Who shall have the penalties forfeited by the statute of 4 H. 8, c. 7, and 25 H. 8, c. 9, and by what means they shall be recovered.

fended contrary to the form and effect of this statute, should be allowable, as in the said act more plainly appeareth; (6) which act was appointed to endure only to the end of the next parliament then next following, and
 28 H. 8, c. 9. which act was after renewed in the parliament holden at *Westminster* in the twenty-eighth year of the reign of our said sovereign lord, to endure to
 31 H. 8, c. 7. the end of the next parliament then next following, and which act was also renewed at the parliament holden at *Westminster* in the thirty-first and thirty-second years of our said sovereign lord's reign, to endure until the last day of the next parliament then next ensuing.

Stat. 6. "Prayen therefore in this present parliament our said sovereign lord's true and obedient subjects, the pewterers of this his said realm, and the other the true commons of the same, because the same act is beneficial
 The statute of 25 H. 8, c. 9, made perpetual. and necessary for the common wealth of this realm, that it may be enacted by the king, our sovereign lord, the lords spiritual and temporal, and other the commons, in this present parliament assembled, and by authority of the same, Forasmuch as the same act, and every thing therein contained, is good and beneficial to the commonwealth of this realm, that all and every the said acts and statutes, and all and every article, sentence, and clause comprized in the same, may from henceforth stand and abide in full strength and effect for evermore from henceforth to endure, according to the purport, tenor, and effect of the same act or acts, as though the said articles, sentences, and clauses were specially limited, recited, or declared in this present act.

Stat. 7. "And that no person ne persons from henceforth buy, or take by exchange, or otherwise take into or within this realm, to the intent to sell any such things or wares above rehearsed, made or to be made out of this realm, upon pain of like forfeitures and penalties as are and were expressed in the said several acts; the same penalties and forfeitures to be levied as is afore expressed.

Stat. 8. "And that it may be further enacted by authority afore said, That if any person or persons do unlawfully withstand, interrupt, disturb, or let the master and wardens, or their deputies, of the said craft of pewterers, for the time being, or the head officer or governor, head officers or governors of cities, towns, or boroughs within this realm, wherein no such master or wardens are or shall be, or any of them, in searching, seizing, and taking into their hands and possessions such wares as shall happen to be bought, or brought into this realm, contrary to the purport and effect of the said statute made in the said twenty-fifth year of the reign of our said sovereign lord, that then every such person and persons so offending, in letting disturbing or withstanding the said seizure, or taking of such wares, as is afore said, shall lose and forfeit for every time so doing, the sum of five pounds sterling, the one half whereof should be to the king's use, and the other half to him or them that will or shall sue for the same, by action of debt, writ, bill, plaint, or information in any of the king's courts of record; in which action or suit no protection, privilege, or wager of law shall be allowed nor admitted.

The penalty for hindring of searching or seizing of pewter, &c.

STAT. 2 & 3 Ed. 6, c. 37, [A. D. 1548, intituled] "An act against the carrying of bell-metal out of the realm."

"Where in the parliament holden at *Westminster*, in the three and thirtieth year of our late sovereign lord of famous memory, king *Henry* the eighth, it was enacted, That no person or persons should carry or convey by water or otherwise, any brass, copper, latton, bell-metal, pan-metal, or gun-metal, or shroff-metal, whether it be clean or mixed (tin and lead only excepted) into any part beyond the sea, or into any outward realm or dominion whatsoever it be, upon pain of forfeiture of double the value thereof: (2) and where also by the said statute it was likewise enacted, That no person or persons should at any time ship or carry any of the said metals, to carry or discharge the same in any part of this realm, unless such person or persons before the shipping thereof did declare and manifest unto the customers of such a port or creek where the same metal should be shipped, the true weight of all such metal as should be shipped; (3) and should also make a sufficient obligation in the law, in the which he should be bounden to the said customer, to the king's use, in such sum as should amount to the double value of the said metal so declared and manifested, with condition that the same should be discharged at some port or creek within this realm, and in no other place, upon pain to forfeit the same, in manner and form above rehearsed, as by the said act, amongst other things, more plainly appeareth.

Sett. 2. "Forasmuch as the pains and forfeitures in the said estatute are not great enough, and forasmuch also as divers covetous and greedy persons, having no respect or obedience to the laws, have craftily, and by all sinister means practised to defraud the said estatute, some by bribing and rewarding the searchers, masters, pursers, or other officers of ships, some by secret conveying thereof in small creeks, sugar chests, hogsheds, or otherwise: (2) be it therefore ordained and enacted, That from and after the feast of *Easter* next coming, no person or persons shall carry or convey, or ship to the intent to carry or convey any brass, copper, latton, bell-metal, pan-metal, gun-metal, or shroff-metal, whether it be clear or mixed, (tin and lead only excepted) into any part beyond the sea, or into any outward realm or dominion whatsoever it be; (3) upon pain to forfeit the double value thereof, and ten pound for every thousand weight of the same metal so carried and conveyed, or shipped, to the intent to be carried or conveyed; the trial whereof shall be in like manner and form as in the said former act is expressed.

Sett. 3. "And be it further enacted, That no person or persons after the said feast, shall ship or carry any of the said metals prohibited by this statute, to carry or discharge the same in any part of this realm, unless such person or persons before the shipping thereof, do declare and manifest to the customer of such port or creek where the same metal shall be shipped, the true weight of all such metals as shall be shipped, and shall also

No person shall carry bell-metal, &c. out of this realm.
33 H. 8. c. 7.
3 Inst. 97.
Savill. 9. 12.

The penalty for carrying, or for shipping to carry any brass, latton, &c. beyond the sea, in part repealed by 5 & 6 W. & M. c. 17.

What he must do that shipperth metals in one port of this realm, to carry to another.

before the shipping thereof, make a sufficient obligation in the law, in which he shall be bounden to the said customer to the king's use, in such sum as shall amount to the double value, and ten pound for every thousand weight so declared and manifested, with condition, as in the said statute is appointed and enacted, and shall make certificate of the discharge thereof, in like manner as in the said statute is further ordained and enacted.

The penalty of a customer offending.

Sett. 4. " And be it further enacted, That if any customer, comptroller, or his or their deputy or deputies, by covin, or by any other undue mean, shall suffer any person after that the metal is shipped or carried, contrary to the meaning of this act, to make obligation or obligations without dates, for the discharge and certificate of their metal, as is aforesaid, that then such customer so suffering, or receiving such obligation or obligations, shall lose his office, and the value of the metal so shipped or carried.

The penalty of the master of a ship which carrieth the metal.

Sett. 5. " And be it further enacted, That if any master, owner, purser, or boatswain of any ship, do willingly permit or suffer any of the metals aforesaid to be shipped contrary to the tenor of this act, or else perceiving any such metals to be shipped, do not disclose the same within three days after knowledge had, to the customer or comptroller of the same port, or his or their deputy or deputies where the same is shipped, that then every such owner, master, purser, or boatswain, so willingly putting the same metal to be shipped, or concealing the same when he perceiveth it to be shipped, shall forfeit the double value of the same metal so shipped or carried: (2) and if any customer or searcher do willingly suffer any of the metals aforesaid to be shipped contrary to the meaning of this act, or else having knowledge that it is secretly shipped or carried, do not seize the same to the king's use, then every customer or searcher so offending, shall lose his office, and the value of the metal so shipped or carried.

No metal shall be laden but where there is a customer.

Sett. 6. " And be it further enacted, That no person or persons shall after the said feast, lade, ship, or carry into any part beyond the sea any of the metals aforesaid, but only out of such port or creek where the customer or his deputy is resident and dwelling, upon pain of forfeiture of the said metal, and ten pound for every thousand weight so shipped or carried; (2) the moiety of all which forfeitures shall be to our sovereign lord the king, and the other moiety to him or them that will sue for the same by bill, plaint, information, action of debt, or otherwise in any of the king's courts, in which no essoin, protection, or wager of law shall be admitted or allowed.

A confirmation of the statute of 33 H. 8, c. 7.

Sett. 7. " And be it further enacted, That the said estatute made in the said three and thirtieth year of the reign of the said late king *Henry* the eighth, and every article and provision, being not altered by this statute, shall be good and effectual. 21 H. 8, c. 10.

Physicians

Physicians and Surgeons.

STAT. 5 Hen. 8, c. 6, [*A. D. 1513, intituled,*] “ An act concerning surgeons to be discharged of quests and other things.”

“ Sheweth unto your discreet wisdoms, your humble orators the wardens and fellowship of the craft and mystery of surgeons enfranchised in the city of *London*, not passing in number twelve persons, that whereas they and their predecessors, from the time that no mind is to the contrary, as well in this noble city of *London*, as in all other cities and boroughs within this realm, or elsewhere, for the continual service and attendance that they daily and nightly at all hours and times give to the king's liege people, for the relief of the same, according to their science, have been exempt and discharged from all offices and business, wherein they should use or bear any manner of armour or weapon, and with like privilege have been entreated as heralds of arms, as well in battles and fields, as other places, therefore to stand unharnessed and unweaponed, according to the law of arms, because they be persons that never used feats of war, nor ought to use, but only the business and exercise of their science, to the help and comfort of the king's liege people in the time of their need : (2) and in the afore-said city of *London*, from the time of their first incorporation, when they have been many mo in number than they be now, were never called nor charged to be on quest, watch, nor other office, whereby they should use or occupy any armour, or defenceable geer of war, where through they should be unready, and letted to practise their cure of men being in peril : (3) Therefore for that there be so small number of the said fellowship of the craft and mystery of surgeons, in regard of the great multitude of patients that be, and daily chance, and infortune happeneth and increaseth in the foresaid city of *London*, and that many of the king's liege people suddenly wounded and hurt, for default of help in time to them to be shewed, perish, and so divers have done, as evidently is known, by occasion that your said suppliants have been compelled to attend upon such constableness, watches, and juries, as is afore-said ; (4) be it enacted and established by the king our sovereign lord, and the lords spiritual and temporal, and by the commons, in this present parliament assembled, and by authority of the same, That from henceforth your said suppliants be discharged, and not chargeable of constableness, watch, and of all manner

The causes why surgeons have been exempt from bearing of armour, or other services.

The surgeons of *London* shall be exempt from bearing armour or parish offices, &c.

of office bearing any armour, and also of all inquests and juries within the city of *London*: (5) and also that this act in all things do extend to all barber-surgeons admitted and approved to exercise the said mystery of surgeons, according to the form of the statute lately made in that behalf, so that they exceed not, ne be at one time above the number of twelve persons.

3 H. 8, c. 11.
32 H. 8, c. 42.

Mr. Serjeant *Hawkins*, speaking of this statute, says, it seems that by the equity thereof, and the ancient custom of the realm, *all* surgeons have been allowed the like privilege; that is, whether in *London* or elsewhere. 2 *Hawk.* 64.

STAT. 32 Hen. 8, c. 40, [*A. D.* 1540, intituled] “ For physicians and their privilege.”

4 Inst. 251. “ In most humble wise sheweth unto your majesty, your true and faithful subjects and liege men, the president of the corporation of the commonalty and fellowship of the science and faculty of physic in your city of *London*, and the commons, and of the fellows of the same, that whereas divers of them many times having in cure, as well some of the lords of your most honourable council, and divers times many of the nobility of this realm, as many other of your faithful and liege people, cannot give their due attendance to them, and other their patients, with such diligence as their duty were, and is to do, by reason they be many times compelled, as well within the city of *London*, and suburbs of the same, as in other towns and villages, to keep watch and ward, and be chosen to the office of constable, and other offices within the said city and suburbs of the same, as in other places within this your realm, to their great fatigation and unquieting, and to the peril of their patients, by reason they cannot be conveniently attended: (2) it may therefore please your most excellent majesty, with the assent of your lords spiritual and temporal, and the commons, in this present parliament assembled, and by authority of the same, to enact, ordain, and establish, That the said president of the commonalty and fellowship for the time being, and the commons and fellows of the same, and every fellow thereof that now be, or that any time hereafter shall be their successors, and the successors of every of them, at all time and times after the making of this present act, shall be discharged to keep any watch or ward in your said city of *London*, or the suburbs of the same, or any part thereof; (3) and that they or any of them shall not be chosen constable, or any other officer in the said city or suburbs; (4) and that if any time hereafter the said president for the time being, or any of the said commons, or fellows for the time being, by any ways or means, be appointed or elected to any watch or ward, office of constable, or any other office within the said city or suburbs, the same appointment or election to be utterly void and of none effect; any order, custom, or law to the contrary before this time used in the said city notwithstanding.

The physicians in *London* shall be discharged to bear certain offices there.

Yet.

Yet it seems to have been holden, that the equity of this act doth not extend to other physicians not mentioned in it; perhaps for this reason, because physicians have no such special custom for their discharge as surgeons are said to have. 2 *Hawk.* 64.

And it seems that a practising physician, being chosen constable in pursuance of a custom in respect of his lands in a town, has no remedy for his discharge; for that there are no precedents of this kind, and his calling is private; yet if he be chosen constable of a town, which hath sufficient persons besides to execute this office, and no special custom concerning it, perhaps he may be relieved by the king's bench. 2 *Hawk.* 63.

STAT. 1 *Mar. Sess.* 2, c. 9, [*A. D.* 1553, intituled] "An act touching the corporation of the physicians in *London*."

SECT. 6. "And further be it enacted, That all justices, mayors, sheriffs, Other magistrates shall bailiffs, constables, and other ministers and officers within the city and precincts above written, upon request to them made, shall help, aid and assist the president of the said college, and all persons by them (from time to time) authorized for the due execution of the said acts or statutes, upon pain for not giving of such aid, help and assistance, to run in contempt of the queen's majesty, her heirs and successors." *assist the physicians in their search.*

By STAT. 3 *Jac.* 1, c. 5, SECT. 8, No recusant convict shall practise physick, nor use the trade of an apothecary, on pain of £.100. See **Popecry.**

STAT. 6 *Will.* 3, c. 4, [*A. D.* 1694, intituled] "An act for exempting apothecaries from serving the offices of constable, scavenger, and other parish and ward offices, and from serving upon juries."

"Whereas the art of the apothecary is of great and general use and benefit, by reason of their constant and necessary assistance to his majesty's subjects, which should oblige them solely to attend the duty of their professions; yet by reason that they are compelled to serve several parish, ward, and leet offices, in the places where they live, and are frequently summoned to serve on juries and inquests, which take up great part of their time, they cannot perform the trusts reposed in them as they ought, nor attend the sick with such diligence as is required: and whereas king *James* the First, by his letters patents under the great seal of *England* did incorporate the apothecaries exercising that art within *London* and seven miles compass, by the name of *The master, wardens, and society of the art and mystery of apothecaries of the city of London*:

SECT. 2. "Be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That all and every person and persons, using and exercising, offices, *Apothecaries within London, and seven miles thereof, exempt from*

cising, or that hereafter shall use and exercise, the art of an apothecary within the said city of *London*, and seven miles thereof, being free of the said society, and who already have been, or hereafter shall be duly examined of his skill in the said mystery, and shall be approved of for the same, and every of them, for so long as he or they shall use and exercise the said art, and no longer, shall and may at all times hereafter be freed and exempted from the several offices of constable, scavenger, overseer of the poor, and all other parish, ward, and leet offices, and of and from the being put into or serving upon any juries or inquests; and if at any time hereafter any such person or persons using the said art, and being qualified, as aforesaid, shall be chosen or elected into any of the said offices, or returned, required, or appointed to serve in any jury, leet, or inquest, or be disquieted or disturbed by reason thereof, that then such person or persons, producing a testimonial under the common seal of the said corporation, of such his examination, approbation, and freedom, to the person or persons, by whom he shall be so elected or appointed, or by or before whom he shall be summoned, returned, or required to serve or hold any of the said offices or duties, shall be absolutely discharged from the same, and such nomination, election, return, and appointment shall be utterly void, and of none effect; any order, custom, law, or statute, to the contrary in any wise notwithstanding.

Country apothecaries, who have served 7 years, exempted from offices.

5 El. c. 4.

Apothecaries already chosen not exempted.

This act to continue 7 years.

Sett. 3. "And be it further enacted by the authority aforesaid, That all persons using and exercising, or that hereafter shall use and exercise, the said art of an apothecary within any other parts of this kingdom, dominion of *Wales*, or town of *Berwick upon Tweed*, and who have been brought up and served, or hereafter shall be brought up and serve in the said art as an apprentice, by the space of seven years, according to the statute of the fifth of queen *Elizabeth*, shall likewise from henceforth be freed and exempted from all and singular the offices and duties aforesaid, within the several counties, cities, and places, where they live and inhabit, for so long as he or they shall use and exercise the said art, and no longer; and if any person or persons so qualified shall be elected or chosen into any of the said offices, or returned to serve in any jury, leet, or inquest, such nomination, election, return, and appointment, shall be void, unless such person or persons shall voluntarily consent and agree to hold such office, or serve upon such jury, leet, or inquest. Provided always, That nothing herein contained shall be construed to exempt or excuse any apothecary that is or shall, before the commencement of this act, be elected or appointed to serve any of the said offices, from serving in the said offices for the usual time for which he was so elected and appointed. Provided always, That this act shall continue for the space of seven years, and from thence to the end of the next session of parliament, and no longer. *Made perpetual by 9 Geo. 1, cap. 8, sett. 1.*"

STAT. 18 *Geo. 2, c. 15*, [*A. D. 1745, intituled*] "An act for making the surgeons of *London* and the barbers of *London* two separate and distinct corporations."

Sett.

Secl. 10. " And it is hereby further enacted by the authority aforesaid, Surgeons exempted from parish, ward, and leet offices, and juries. That all and every person and persons, being freemen of the said company and corporation of surgeons established and incorporated by this act, and who already have been, or hereafter shall be, examined and approved pursuant to the rules and orders of the said company, and every of them, for so long time as he and they shall use and exercise the said art or science of surgery, and no longer, shall and may, at all times hereafter, be freed and exempted from the several offices of constable, scavenger, overseer of the poor, and all other parish, ward, and leet offices, and of and from the being put into or serving upon any jury or inquest: and if at any time hereafter, any such person or persons, using and practising the said art or science of surgery, and being qualified as aforesaid, shall be chosen and elected into any of the said offices, or returned, required, or appointed to serve on any jury, leet, or inquest, or be disquieted or disturbed by reason thereof; that then such person or persons, producing a testimonial, under the common seal of the said corporation, of such his examination, approbation, and freedom, to the person or persons by whom he shall be so elected or appointed, or by or before whom he shall be summoned, returned, or required to serve or hold any of the said offices or duties, shall be absolutely discharged from the same; and such nomination, election, return, and appointment, shall be utterly void, and of no effect; any order, custom, law, or statute to the contrary in any wise notwithstanding.

" If a physician, says lord *Hale*, gives a person a potion without any intent of doing him any bodily hurt, but with an intent to cure or prevent a disease, and contrary to the expectation of the physician it kills him, this is no homicide; and the like of a surgeon. And I hold their opinion to be erroneous, who think, that if he be no licensed surgeon or physician that occasions this mischance, that then it is felony; for physic and salves were before licensed physicians and surgeons; and therefore if they are not licensed according to the statute of 3 *Hen. 8, c. 11*, or 14 *Hen. 8, c. 5*, they are subject to the penalties in the statutes, but God forbid that any mischance of this kind should make any person not licensed guilty of murder or manslaughter. These opinions therefore may serve to caution ignorant people not to be too busy in tampering with physic, but are no safe rule for a judge or jury to go by; we see the statute of 34 & 35 *Hen. 8, c. 8*, dispenseth with the penalty of these former statutes, as to outward applications and medicines for agues, stone or strangury, which may be administered by any person, and the preamble of the statute tells us, that if none but licensed surgeons should be used in many cases, many of the king's subjects were like to perish for want of help. But if a woman be with child, and any gives her a potion to destroy the child within her, and she take it, and it works so strongly that it kills her, this is murder; for it was not given to cure her of a disease, but unlawfully to destroy her child within her, and therefore he, that gives the potion to this end, must take the hazard, and if it kill the mother, it is murder, and so ruled before me at the assizes at *Bury*, in the year 1670. And certainly if that opinion should obtain, that if one not licensed a physician should be guilty of felony,

felony, if his patient miscarry, we should have many of the poorer sort of people, especially remote from *London*, die for want of help, lest their intended helpers might miscarry. This doctrine, therefore, that if any die under the hand of an unlicensed physician, it is felony, is apocryphal, and fitted, I fear, to gratify and flatter doctors and licentiates in physic, tho' it may, as I said, have its use to make people cautious and wary, how they take upon them too much in this dangerous employment. 1 *Hale's Hist. P. C.* 429, 430."

Pillory and Tumbrel.

PILLORY, says lord *Coke*, is derived from the *French* word *pilastre*, a pillar, *columna: et est lignea columna, in qua collum insertum premitur*, a wooden pillar, wherein the neck of the offender is put and pressed, and in law it is called *collistrigium, quia in eo collum hominum constringitur*. This punishment is very ancient, and was used by the *Saxons*. 3 *Inst.* 219.

By the *Ordin.* for bakers, *incert temporis, c. 3*, every pillory or stretch-neck must be of convenient strength, so that execution may be done upon offenders without peril of their bodies.

The *tumbrel* seems to have been the same anciently with the *ducking stool*, an engine for the punishment of scolding women, by ducking them over head and ears in water, and especially in muddy or stinking water, according to the etymology of lord *Coke*, who tells us, that the word *tumbrel* signifieth a dung-cart. *Lamb.* 61. 3 *Inst.* 219.

Every one that hath a leet or market, ought to have a pillory and tumbrel to punish offenders; and it seems that a leet may be forfeited for not taking care to have a pillory and tumbrel. 3 *Inst.* 219. 2 *Hawk.* 75.

They who have been adjudged to the pillory or tumbrel are so infamous, that they shall not be received to be jurors or witnesses. 3 *Inst.* 219.

And for that the judgment of the pillory or tumbrel doth make the delinquent infamous, the justices of the peace, says lord *Coke*, should be well advised before they give judgment of any person to the pillory or tumbrel, unless they have good warrant for their judgment therein. Fine and imprisonment, for offences fineable by them, is a fair and sure way. 8 *Inst.* 219.

Plague.

Plague.

STAT 1 Jac. 1, c. 31, [A. D. 1603, intituled] "An act for the charitable relief and ordering of persons infected with the plague."

"Forasmuch as the inhabitants of divers cities, boroughs, towns-corporate, and of other parishes and places being visited with the plague, are found to be unable to relieve the poorer sort of such people so infected, who of necessity must be by some charitable course provided for, lest they should wander abroad, and thereby infect others: (2) and forasmuch as divers persons infected with that disease, and others inhabiting in houses and places infected, as well poor people and unable to relieve themselves, that are carefully provided for, as others which of themselves are of ability, being commanded by the magistrate or officer of or within the place where the infection shall be, to keep their houses, or otherwise to separate themselves from company, for the avoiding of further infection do notwithstanding very dangerously and disorderly misdemean themselves:

SECT. 2. "Be it therefore enacted by the authority of this present-parliament, That the mayor, bailiffs, head-officers, and justices of peace of every city, borough, town-corporate and places privileged, where any mayor and bailiffs, head-officers or justices of peace are or shall be, or any two of them, shall have power and authority from time to time, to tax and assess all and every inhabitant, and all houses of habitation, lands, tenements, and hereditaments within the said city, borough, town-corporate and places privileged, or the liberties or precincts thereof, at such reasonable taxes and payments as they shall think fit for the reasonable relief of such persons infected, or inhabiting in houses and places infected in the same cities, boroughs and towns corporate, and places privileged, (2) and from time to time to levy the same taxes of the goods of every person refusing or neglecting to pay the said taxes, by warrant under the hand and seal of the mayor and bailiffs, and head-officers aforesaid, or two such justices of peace, to be directed to any person or persons for the execution thereof.

SECT. 3. "And if the party to whom such warrant is or shall be directed, shall not find any goods to levy the same, and the party taxed shall refuse to pay the same tax, That then upon return thereof, the said mayor, bailiffs, head-officers or justices of peace, or any two of them, shall by like warrant under their hands and seals, cause the same person so taxed to be arrested, and committed to the gaol, without bail or mainprize, until he shall satisfy the same taxation and the arrearages thereof.

SECT. 4. "And if the inhabitants of any such city, borough, town-corporate, or place privileged, shall find themselves unable to relieve their said poor infected persons, and others as aforesaid, That then upon

Several provisions made for those that be infected with the plague.

Taxing the inhabitants for relief of the sick of the plague.

The penalty of any party taxed refusing to pay, and having no goods.

A provision if the inhabitants of the town infected

be not able to
relieve the
sick.

certificate thereof by the mayor, bailiffs, head-officers and other the said justices of peace, or any two of them, to the justices of peace of the county of or near to the said city, borough, town-corporate, or privileged place so infected, or any two of them to be made, the said justices of or near the said county, or any two of them, shall or may tax and assess the inhabitants of the county within five miles of the said place infected, at such reasonable weekly taxes and rates as they shall think fit to be levied by warrant from any such two justices of peace of or near the county, by sale of goods, and in default thereof, by imprisonment of the body of the party taxed, as aforesaid.

A provision if
the infection
shall be where
there are no
justices of
peace.

Sec. 5. "And if any such infection shall be in any borough, town-corporate or privileged place, where there are or shall be no justices of peace, or in any village or hamlet within any county, That then it shall and may be lawful for any two justices of peace of the said county wherein the said place infected is or shall be, to tax and assess the inhabitants of the said county, within five miles of the said place infected, at such reasonable weekly taxes and rates as they shall think fit for the reasonable relief of the said places infected, to be levied by warrant from the said justices of peace of the same county, by sale of goods, and in default thereof, by imprisonment of the body of the party so taxed, as aforesaid: (2) The same taxes made by the said justices of peace of the county, for the relief of such cities, boroughs, towns-corporate, and places privileged, where there are no justices of peace, to be disposed as they shall think fit; and where there are justices of peace, then in such sort as to the mayors, bailiffs, head-officers and justices of peace there, or any two of them shall seem fit and convenient.

The taxes as-
sessed shall be
certified at the
next quarter-
sessions.

Sec. 6. "All which taxes and rates made within any such city, borough, town-corporate or place privileged, shall be certified at the next quarter-sessions to be holden within the said city, borough, town-corporate or place privileged; (2) and the said taxes and rates made within any part of the said county, shall in like sort be certified at the next quarter-sessions, to be holden in and for the said county; (3) and that if the justices of peace at such quarter-sessions respectively, or the more part of them shall think it fit the said tax or rate should continue, or be enlarged, or extended to any other parts of the county, or otherwise determined, then the same to be so enlarged, extended or determined, encreased or taxed and levied in manner and form aforesaid, as to the said justices at

The forfeiture
of officers
making de-
fault to levy
the money as-
sessed.

the quarter-sessions respectively shall be thought fit and convenient: (4) and every constable and other officer that shall wilfully make default in levying such money as they shall be commanded by the said warrant or warrants, shall forfeit for every such offence ten shillings, to be employed on the charitable uses aforesaid.

An infected
person com-
manded to
keep his house,
disobeyeth.

Sec. 7. "And be it further enacted, That if any person or persons infected, or being or dwelling in any house infected, shall be by the mayor, bailiffs, constable or other head-officer, of any city, borough, town corporate, privileged place or market-town, or by any justice of peace, constable, headborough, or other officer of the county (if any such infection

be out of any city, borough, town-corporate, privileged place or market-town) commanded or appointed, as aforesaid, to keep his or their house, for avoiding of further infection, and shall notwithstanding wilfully and contemptuously disobey such direction and appointment, offering and attempting to break out and go abroad, and to resist, or going abroad and resisting such keepers or watchmen, as shall be appointed, as aforesaid, to see them kept in, That then it shall be lawful for such watchmen, with violence to enforce them to keep their houses: and if any hurt come by such enforcement to such disobedient persons, That then the said keepers, watchmen, and any other their assistants, shall not be impeached therefore: (2) and if any infected person, as aforesaid, so commanded to keep house, shall, contrary to such commandment, wilfully and contemptuously go abroad, and shall converse in company, having any infectious sore upon him uncured, That then such person and persons shall be taken, deemed and adjudged as a felon, and to suffer pains of death, as in case of felony: (3) but if such person shall not have any such sore found about him, then for his said offence, to be punished as a vagabond in all respects should or ought to be, by the statute made in the thirty-ninth year of the reign of our late sovereign lady queen *Elizabeth*, for the punishment of rogues and vagabonds; and further to be bound to his or their good behaviour for one whole year. 39 El. c. 4.

Sec. 8. “ Provided, That no attainder of felony by virtue of this act, shall extend to any attainder or corruption of blood, or forfeiture of any goods, chattels, lands, tenements or hereditaments.

Sec. 9. “ And be it further enacted by the authority aforesaid, That it shall be lawful for justices of peace, mayors, bailiffs and other head-officers aforesaid, to appoint within their several limits, searchers, watchmen, examiners, keepers and buriers, for the persons and places respectively infected, as aforesaid, and to minister unto them oaths for the performance of their offices of searchers, examiners, watchmen, keepers and buriers, and give them other directions, as unto them for the present necessity shall seem good in their discretions; (2) and this act to continue no longer than until the end of the first session of the next parliament. Attendants shall be appointed upon the infected. The continuance of this act.

Sec. 10. “ Provided always, and be it enacted by the authority of this present parliament, That no mayors, bailiffs, head-officers, or any justice of peace, shall by force or pretext of any thing in this act contained, do or execute any thing before-mentioned, within either the universities of *Cambridge* or *Oxford*, or within any cathedral church, or the liberties or precincts thereof, in this realm of *England*, or within the colleges of *Eaton* or *Winchester*; (2) but that the vice-chancellor of either the universities for the time being, within either of the same respectively, and the bishop and dean of every such cathedral church, or one of them, within such cathedral church, and the provost or warden of either of the said colleges within the same, shall have all such power and authority, and shall do and execute all and every such act and acts, thing and things in this act before-mentioned, within their several precincts and jurisdictions aforesaid, as wholly, absolutely and fully, to all intents and purposes, as any mayor, bailiffs, The universities, cathedral churches, Eaton, Winchester college.

head-officers or justices of peace, within their several precincts and jurisdictions may elsewhere by force of this act do and execute. 3 *Car. 1, c. 4.*
Continued until the end of the first session of the next parliament, and farther continued by 16 Car. 1, c. 4."

STAT. 9 *Ann. c. 2, [A. D. 1710, intituled]* "An act to oblige ships coming from places infected, more effectually to perform their quarantine."

Repealed by 7 Geo. 1, ft. 1, c. 3, but was revived by 8 Geo. 1, c. 8, which enacts that neither the said stat. of 7 Geo. 1, nor any thing therein contained, shall continue in force longer than Mar. 25, 1723.

"Whereas several places on or near the *Baltick* sea are and have been, for some time past, infected with the plague; and her majesty, for preventing that infection being brought into her dominions by persons or merchandizes coming from places infected, hath by several orders made by her in council, and by her royal proclamation, dated the ninth day of *November*, in the ninth year of her majesty's reign, required a quarantine to be performed by all ships and persons coming from places infected, as therein is directed: and whereas it is necessary that some provision be made by act of parliament, for obliging all persons concerned to perform their quarantine in such manner as hath been, or shall be, in times of infection, ordered by her majesty, her heirs and successors, and for punishing offenders therein, in a more expeditious manner than at present can be in the ordinary methods of the law; be it enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in parliament assembled, and by the authority of the same, That during the present infection, and in all future times, when any foreign countries or places shall be infected with the plague, all ships or vessels coming into the kingdom of *Great Britain* or *Ireland*, from places so infected, shall be obliged to make their quarantine, in such place and places, for such time, and in such manner, as hath been, or as shall from time to time be directed for that purpose, by her majesty, her heirs or successors; and that during the time, and until the respective ships shall be discharged of such quarantine, no persons coming, or goods imported in such ship or ships, shall come on shore, or go on board any other ship, or be landed, or put into any other ship, vessel, or boat, in any place within her majesty's dominions; nor shall any person go on board any such ship, without licence, for the respective purposes aforesaid, first had and obtained in writing under the hand of such person or persons who shall be authorized and appointed to take care to see such quarantine duly performed; and that the said ships, and the persons and goods coming and imported in, or going on board the same, during the time of quarantine, and all ships, vessels, boats and persons receiving any goods or persons under quarantine, shall be subject to such orders, rules and directions touching quarantine, as hath been, or shall be made by her majesty, her heirs or successors, and notified by proclamation.

All ships coming from places infected, to make their quarantine in such place, &c. as shall be directed by her majesty, &c.

No person shall go on board such ships without licence; and such ships, persons, &c. shall be subject to the orders of the queen, &c.

After the 25th of Decem. 1710, if any master, &c. shall go on a shore, &c.

Sec. 2. "And be it further enacted by the authority aforesaid, That from and after the five and twentieth day of *December*, one thousand seven hundred and ten, if any commander, or master, or other person, taking charge of any ship or vessel, so coming from any place infected, as aforesaid,

saïd, shall himself, or shall permit or suffer any seaman belonging to such ship, or any passenger therein, to quit such ship or vessel, by going on shore, or by going on board any other ship, boat, or vessel whatsoever, during the time of the saïd quarantine, and until such ship shall be discharged from quarantine, without such licence first had and obtained, as aforesaïd, then, and in all and every such case and cases, every such ship and vessel, with her tackle, apparel and furniture, shall be forfeited to her majesty, her heirs and successors, and shall and may be seized, sued for, and recovered in the court of exchequer, to the use of her majesty, her heirs and successors: and further, That if any person or persons whatsoever, arrived or who shall arrive in any port or place within the realms of *Great Britain and Ireland*, in any ship or vessel which shall, by reason of its coming from any foreign country infected with the plague, be obliged to do quarantine, shall, after the saïd five and twentieth day of *December*, one thousand seven hundred and ten, quit such ship or vessel, by coming on shore, or by going on board any other ship or vessel before or while under such quarantine, it shall and may be lawful for the persons appointed to see the quarantine duly performed, to compel, and, in case of resistance, by force and violence to compel such person or persons to return on board such ships; and there to remain during the time of quarantine; and such person so leaving such ship, and being thereof, at any time after the expiration of his quarantine, convicted by the oath of one or more credible witnesses, before any one or more justice or justices of the peace living near the place where the offence shall be committed, shall forfeit such sum, not exceeding twenty pounds, as such justice or justices shall adjudge, to be forthwith paid down into the hands of such justice or justices; who are hereby impowered, according to his or their discretions, to reward the informer out of the same, not exceeding one third part, and are hereby required to pay the remainder, (necessary charges being deducted) to the use of the poor of the parish where such conviction shall be had; and in default of such payment, it shall be lawful for such justice or justices of the peace to commit such offender to the house of correction, there to be kept to hard labour for any time not exceeding one month.

Sett. 3. " And be it further enacted by the authority aforesaïd, That if any person whatsoever, from and after the saïd five and twentieth day of *December*, one thousand seven hundred and ten, shall presume to go on board, and return from any such ship or vessel, so required to do quarantine, before or during the time of such quarantine, without such licence, as aforesaïd, every such offender shall and may be compelled, and, in case of resistance, may by force and violence be compelled by the persons appointed, as aforesaïd, to return on board such ship, and there to remain during the time of her quarantine; and the master of such ship is hereby obliged to keep and maintain such person aboard accordingly.

Sett. 4. " And be it further enacted by the authority aforesaïd, That it shall and may be lawful for any officer of her majesty's customs or others, who shall be directed to take care that such quarantine be duly performed, (in all such cases where her majesty's officers shall judge it conducive

or permit any person so to do,

without licence, the ship, &c. shall be forfeited to the queen.

Persons coming on shore, to be compelled to return on board,

there to remain during the quarantine.

Punishment of persons leaving such ship.

Forfeiture, how to be applied.

Persons going on board such ship; and returning on shore, to be compelled to return on board again, there to remain during the quarantine.

The person who takes care of the quarantine, may seize any boat belonging

ing to the ship, and detain it during the quarantine. Punishment of such person, suffering any feamen, &c. to quit such ship.

conducibile to the ends of this act) to seize any boat or skiff belonging to such ship or vessel, or which shall be therewith found, and to detain the same until such quarantine shall be performed; and in case any such officer or other person so intrusted, as aforesaid, shall voluntarily suffer any feamen belonging to such ship or vessel, or any passenger therein, to quit such ship or vessel while under quarantine, every such offender shall forfeit the sum of one hundred pounds; one moiety thereof to her majesty, and the other moiety to the person or persons who shall inform or sue for the same, in any of her majesty's courts of record at *Westminster*, to be recovered with costs of suit.

Watches to be kept to prevent persons from coming on shore, or going on board.

Sett. 5. " And be it further enacted by the authority aforesaid, That the justices of the peace of the several counties adjoining to the places where the quarantines are, or shall be appointed to be performed, do, and they, or any one or more of them are hereby required forthwith, and from time to time, when quarantine shall be appointed to be performed, to cause watches to be kept both day and night, in the most proper and convenient places within the several adjacent parishes, with strict orders to them; and they are hereby required not to permit or suffer any person whatsoever to come on shore from, or go on board any ships under quarantine, except such only as have or shall have the charge of seeing the quarantine duly performed, or as shall be licensed, as aforesaid.

After the quarantine is performed, and proof made thereof upon oath, and certificate given, the ship, &c. to be no longer detained.

Sett. 6. " And it is further enacted, That after quarantine shall have been duly performed by any ship or vessel, and the person or persons therein, according to her majesty's proclamation and this act, and upon proof to be made by the oaths of the master or other person having the charge of the said ship, and of two of the persons belonging to such ship or vessel, before the customer, comptroller or collector of the port where such quarantine shall be performed, or the next port thereunto, or before any of their deputies, and any one justice of the peace near adjoining to such port, (who are hereby authorized and required to administer such oath) that such ship or vessel, and all and every the person and persons therein have duly performed the quarantine, as aforesaid, and that the ship or vessel, and all the persons on board are free from infection, then and in such case, such customer, comptroller or collector, or any of their deputies, together with the said justice of the peace, are hereby required to give a certificate thereof; and thereupon such ship or vessel, and all and every person and persons therein, and thereunto belonging, shall be liable to no further restraint or detention during that voyage, by reason of any matter or thing contained in this act.

Is. only to be paid for such oath and certificate, over and above the stamp duties.

Sett. 7. " And it is hereby further enacted, That the officer before whom such oath shall be made, and by whom such certificate shall be given, shall for such respective oath and certificate, demand no more than one shilling for each, over and above the stamp-duties.

Sett. 8. " Provided nevertheless, and it is hereby enacted, That the goods imported in such ships, shall after such quarantine performed, be opened and aired in such place or places, and for such time as hath been,

or shall be directed by her majesty, her heirs or successors, by her or their proclamation.” goods to be open'd and air'd.

STAT. 26 Geo. 2, c. 6, [A. D. 1753, intituled] “An act to oblige ships more effectually to perform their quarentine; and for the better preventing the plague being brought from foreign parts into *Great Britain or Ireland*, or the isles of *Guernsey, Jersey, Alderney, Sark or Man*.”

“Whereas it is necessary that some provision be made by parliament, for obliging ships and persons coming from places infected with or frequently subject to the plague, to perform quarentine in such manner as hath been or shall be ordered by his majesty, his heirs or successors; and for punishing offenders therein in a more expeditious manner than can be done by the ordinary methods of law; be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal and commons in parliament assembled, and by the authority of the same, That all ships and vessels arriving, and all persons, goods and merchandizes whatsoever, coming or imported into any port or place within *Great Britain or Ireland*, or the isles of *Guernsey, Jersey, Alderney, Sark or Man*, from any place from whence his majesty, his heirs or successors, by and with the advice of his or their privy council shall judge it probable that the infection may be brought, shall be obliged to make their quarentine in such place and places, for such time and in such manner, as hath been or shall, from time to time, be directed by his majesty, his heirs or successors, by his or their order or orders made in his or their privy council, and notified by proclamation, or published in the *London Gazette*; and that until such ships, vessels, persons, goods and merchandizes shall have respectively performed, and be discharged from, such quarentine, no such person, goods or merchandizes, or any of them, shall come or be brought on shore, or go or be put on board any other ship or vessel, in any place within his majesty's dominions, unless in such manner, and in such cases, and by such licence as shall be directed or permitted by such order or orders made by his majesty, his heirs or successors, in council as aforesaid; and that all such ships and vessels, and the persons or goods coming or imported in, or going or being put on board the same, and all ships, vessels, boats and persons receiving any goods or persons out of the same, shall be subject to such orders, rules and directions concerning quarentine, and the prevention of infection, as have been or shall be made by his majesty, his heirs and successors in council, and notified by proclamation, or published in the *London Gazette* as aforesaid.

SECT. 2. “And it is hereby further enacted by the authority aforesaid, That if the plague shall appear on board any ship, being to the northward of cape *Finisterre*, the master, commander, or other person having charge thereof shall immediately proceed to the harbour of *New Grimby* in the islands of *Scilly*, where being arrived, he shall make known his case to some officer of the customs there, who shall immediately acquaint some custom-house officer of some near port of *England* thereof; and the said custom-house officer shall give notice of their

All vessels, persons and goods coming from places from whence the plague may be brought, subject to perform quarentine in such places as shall be appointed.

Vessels infected, being to the northward of Cape Finisterre, to proceed to the harbour of New Grimby, and give notice of their

case; to be transmitted to the secretary's office, &c.

Vessels not able to make Scilly, to remain in some road till orders arrive.

Penalty of disobedience, death.

When any place shall be infected, or orders made, officer to go off to the vessel, and interrogate the master concerning the ship's cargo and voyage, health, &c.

custom-house officer shall with all possible speed send up the intelligence thereof to one of his majesty's principal secretaries of state, that such measures may be taken for the comfort and support of the crew of such ship so infected, and such precautions used to prevent the spreading of the infection, as the case shall require; and the said ships shall remain at the said islands of *Scilly*, till his majesty's pleasure be known; nor shall any of her crew go on shore; but in case the said master, commander or other person having charge of the said ship so infected, shall not be able to make the said islands of *Scilly*, or shall be forced by stress of weather or otherwise, to go up either of the channels, he shall not presume to enter with such ship into any port, but shall remain in some open road, till he receives orders from his majesty, or his privy council, and shall take care to prevent any of his ship's company from going out of his ship, and to avoid all intercourse with other ships or persons; and the said master or any other person on board such ship as aforesaid, who shall be disobedient herein, shall be adjudged guilty of felony, and shall suffer death as in cases of felony, without benefit of clergy; and every such offence so made felony, shall and may be enquired of, heard and determined in the county where the offence shall be committed, or else in the county where the offender shall be apprehended.

Sec. 3. "And to the end that it may be better known whether any ship or vessel be actually infected with the plague, or whether such ship or vessel, or the mariners or cargo coming and imported in the same, are liable to any orders touching quarantine; be it further enacted by the authority aforesaid, That when any country or place is or shall be infected with the plague; or when any order or orders is, are or shall be made by his majesty, his heirs or successors, concerning quarantine, and the prevention of infection as aforesaid; as often as any ship or vessel shall attempt to enter into any port or place in *Great Britain* or *Ireland*, or of the isles of *Guernsey*, *Jersey*, *Alderney*, *Sark*, or *Man*, the principal officer of his majesty's customs in such port or place, or such person as shall be authorized to see quarantine duly performed, shall go off, or cause some other person to be by him appointed for that purpose to go off to such ship or vessel; and such officer, or other person authorized to see quarantine performed as aforesaid, or the person so by him appointed for that purpose, shall, at a convenient distance from such ship or vessel, demand of the commander, master or other person having charge of such ship or vessel; and such commander, master or other person having charge of such ship or vessel, shall, upon such demand, give a true account of the following particulars; that is to say, the name of such ship or vessel; the name of the commander or person having charge thereof; at what place or places the cargo was taken on board; what place or places the ship or vessel touched at in her voyage; whether such places, or any, and which of them were infected with the plague; how long such ship or vessel had been in her passage; how many persons were on board when the said ship or vessel set sail; whether any and what persons, during that voyage on board such ship or vessel, had been or shall be then infected with the plague;

plague; how many died in the voyage, and of what distemper; what ships or vessels he, or any of his ship's company, with his privy, went on board, or had any of their company come on board his ship or vessel in the voyage; and to what place such ships or vessels belonged; and also the true contents of his lading, to the best of his knowledge: and in case it shall appear upon such examination or otherwise, that any person then on board such ship or vessel shall at the time of such examination be actually infected with the plague, or that such ship is obliged to perform quarentine, in such case it shall and may be lawful to and for the officers of any of his majesty's ships of war, or any of his majesty's forts or garrisons, and all other his majesty's officers whom it may concern, upon notice thereof given to them, or any of them respectively, and to and for any other person or persons whom they shall call to their aid and assistance, and they are hereby required to oblige such ship or vessel to go and repair to such place as hath been or shall be appointed for performance of quarentine, and to use all necessary means for that purpose, be it by firing of guns upon such ship or vessel, or any other kind of force or violence whatsoever; and in case any such ship or vessel shall come from any place visited with the plague, or have any person on board actually infected, and the commander, master or other person having charge of such ship or vessel, shall conceal the same, such commander, master or other person having charge of such ship or vessel, shall be adjudged guilty of felony, and shall suffer death as in cases of felony, without benefit of clergy; and in case such commander, master or other person having charge of such ship or vessel, shall upon such demand made as aforesaid, not make a true discovery in any other of the particulars aforesaid, such commander, master or other person having charge of such ship or vessel, for every such offence shall forfeit the sum of two hundred pounds, one moiety thereof to the king his heirs and successors, and the other moiety to him or them who shall sue for the same, by action of debt, bill, plaint or information, in any of his majesty's courts of record at *Westminster, Edinburgh, Dublin*, or in the proper courts of the isles of *Guernsey, Jersey, Alderney, Sark or Man* respectively.

If the infection shall be on board, &c. the vessel to be obliged to perform quarentine.

If the vessel shall come from any place infected, or have the infection on board, the master concealing the same, guilty of felony; and not making a true discovery in other particulars, to forfeit 200 l.

SECT. 4. "And be it further enacted by the authority aforesaid, That every master, commander or other person having charge of any ship or vessel which shall be ordered to perform quarentine as aforesaid, shall, after his arrival at the place appointed for the performance of his quarentine, deliver on demand to the chief officer appointed to see quarentine duly performed there, such bill of health, and manifest, as he shall have received from any *British* consul during his voyage, together with his log-book and journal, under penalty of forfeiting five hundred pounds; one moiety thereof to the king, his heirs and successors, the other moiety to him or them who shall sue for the same, by action of debt, bill, plaint or information, in any of his majesty's courts of record at *Westminster, Edinburgh, Dublin*, or in the proper courts of the isles of *Guernsey, Jersey, Alderney, Sark or Man* respectively.

Master of a vessel performing quarentine, to deliver to the officer the bill of health, and manifest, of the *British* consul; with the log-book and journal, under penalty of 500 l.

Master, &c. quitting the vessel before quarantine performed, unless by licence,

or not going to the place appointed, tofeit 500l.

and persons quitting the vessel to be obliged by force to return, and to suffer imprisonment, and forfeit 200l.

Lazarets may be erected on common or private grounds, making satisfaction to the proprietors.

In case of difference, the same to be

Seft. 5. " And be it further enacted by the authority aforesaid, That if any commander, master or other person having charge of any ship or vessel liable to perform quarantine, having notice thereof, shall himself quit, or shall knowingly permit or suffer any seaman or passenger coming in such ship or vessel, to quit such ship or vessel, by going on shore, or by going on board any other ship, boat or vessel before such quarantine shall be fully performed, unless in such cases, and by such proper licence as shall be directed or permitted by such order or orders made or to be made concerning quarantine, and the prevention of infection as aforesaid; or in case any commander, master or other person having charge of such ship or vessel, shall not, within convenient time after due notice given for that purpose by the proper officer, cause such ship or vessel, and the lading thereof, to be conveyed into the place or places appointed for such ship, vessel and lading to perform quarantine respectively; then, and in every such case, every such commander, master or other person having charge of such ship or vessel, for every such offence shall forfeit five hundred pounds; one moiety thereof to the king, his heirs and successors, and the other moiety to him or them who will sue for the same; and also if any person shall so quit such ship or vessel by going on shore, or by going on board any other ship or vessel, contrary to the true meaning of this act, it shall and may be lawful for all persons whatsoever, by any kind of force and violence, to compel such person to return on board such ship or vessel; and every such person so quitting such ship or vessel shall for every such offence suffer imprisonment for the space of six months, and shall also forfeit the sum of two hundred pounds; one moiety to the king, his heirs and successors, the other moiety to him or them that will sue for the same; the same respective penalties and forfeitures to be recovered by action of debt, bill, plaint or information, in any of his majesty's courts of record at *Westminster, Edinburgh, Dublin*, or in the proper courts of the isles of *Guernsey, Jersey, Alderney, Sark* or *Man* respectively.

Seft. 6. " And be it further enacted by the authority aforesaid, That whenever his majesty, his heirs and successors, by and with the advice and consent of parliament, shall direct houses or lazarets to be provided for the receiving and entertaining of persons obliged to perform quarantine, or for the depositing, opening and airing of goods and merchandizes liable to perform quarantine as aforesaid, it shall and may be lawful to erect the same either in any waste grounds or commons, or where such waste grounds or commons are not sufficient, in the several grounds of any person or persons whatsoever, not being a house, park, garden, orchard, yard or planted walk, or avenue to a house, paying such rate, rent or consideration for the same to the persons interested therein respectively, according to their several interests in the same, as shall be agreed on between the persons so interested, their guardians or trustees, and any two persons to be appointed for that purpose by his majesty, his heirs or successors, under his or their sign manual; and in case of any difference concerning such rate, rent or consideration between the persons so interested,

interested, their guardians or trustees, and such persons so to be appointed by his majesty, his heirs or successors as aforesaid, then and in such cases the said persons so to be appointed by his majesty, his heirs and successors, may and are hereby authorized, thirty clear days before any general quarter session of the peace to be holden for the respective counties or divisions where such grounds shall respectively lie as aforesaid, to give or cause to be given, to the occupier or occupiers of such several grounds, or to be left at their last places of abode respectively, a notice in writing, describing the quantity of ground so directed by his majesty, his heirs and successors, by and with the advice and consent of parliament, for the purposes aforesaid, and purporting that the rent or consideration of such ground will be adjusted and settled by a jury at the said sessions; and the justices at their said sessions, upon proof to them made that such notices have been given, shall and are hereby authorized and required to charge the jury which shall attend at the said sessions, or some other jury of twelve honest and substantial men (to be then and there impanelled and returned by the sheriff of the county, without fee or reward) and cause to be sworn, well and truly on their oaths to assess the value of the ground comprized in the said notices, and the rent or consideration to be given for the same to the respective owner or owners thereof, according to their respective interests therein; which oath the said justices are hereby required to administer to the said jury, and to which said jury the said persons to be appointed by his majesty, his heirs and successors, and the parties interested in such ground shall have their lawful challenges; and the said jury being so sworn and charged as aforesaid, after proper evidence on oath given to them, shall by their verdict assess the rent or consideration to be given for such ground to the respective owner or owners thereof, according to their respective interests therein; which verdict of the said jury, and judgment of the said justices thereupon, shall be conclusive and finally bind all parties; and that from and after such verdict and judgment, his majesty, his heirs and successors, shall and may hold and enjoy such ground for and during all such time and term as his majesty, his heirs and successors, shall judge necessary for the purposes aforesaid, paying for the same such rate, rent, or other consideration, as shall be agreed upon, or assessed and adjudged as aforesaid.

Sett. 7. " And be it further enacted by the authority aforesaid, That the proper officers authorized to put in execution such orders made or to be made as aforesaid, shall, and they are hereby empowered and required to cause and compel all persons obliged to perform quarentine as aforesaid, and all goods and merchandizes comprized within any such orders made or to be made as aforesaid, respectively to repair, or be conveyed to some of the said houses or lazarets, or to such other places as shall be provided for the reception of such persons, goods or merchandizes, or for the opening and airing of such goods or merchandizes, according to such order or orders made or to be made as aforesaid.

Sett. 8. " And be it further enacted, That if any person obliged to perform quarentine as aforesaid, shall wilfully refuse or neglect to repair,

settled by a jury at the quarter-sessions.

Officers to oblige all persons to comply with orders.

Persons refusing to perform quarentine, &c.

Officers may
compel them
by force.

Persons escap-
ing, &c. guilty
of felony.

Officers to en-
force obedi-
ence.

Sound persons
entering a la-
zaret, &c.
where the in-
fection is, to
be obliged to
continue
there, and
perform qua-
rentine;

and if he e-
scape to be
guilty of fe-
lony.

Officer ne-
glecting
duty, to for-
feit his office,
and tool.

within convenient time after due notice for that purpose given to him, her or them, by the proper officer, to the house, lazaret, or other place, duly appointed for him, her or them, or having been placed in such house, or lazaret, or other place, shall escape or attempt to escape out of the same before quarantine fully performed; it shall and may be lawful to and for the watchmen, and other persons appointed to see quarantine performed, by such force as the case shall require, to compel every such person so refusing or neglecting as aforesaid, and every such person so escaping or attempting to escape as aforesaid, to repair or return into such house, lazaret, or other place so appointed for him or her as aforesaid; and every such person so refusing or neglecting to repair, within convenient time after such notice as aforesaid, into such house, lazaret, or other place appointed for him or her as aforesaid; and also every person actually escaping as aforesaid, shall be adjudged guilty of felony, and shall suffer death as a felon, without benefit of clergy.

Sett. 9. " And whereas disobedience or refractory behaviour in persons under quarantine may be attended with great danger and inconvenience; be it further enacted by the authority aforesaid, That all persons liable to perform quarantine, whether in ships, lazarets, or elsewhere, shall be subject, during the said quarantine, to such orders as they shall receive from the proper officers authorized to see it duly performed; and the said officers are hereby impowered and required to enforce all necessary obedience to their said orders; and may, in case of necessity, call in others to their assistance; and all persons so called are hereby required to assist accordingly.

Sett. 10. " And be it further enacted, That if any person not infected with the plague, nor liable to perform quarantine, shall enter any house, lazaret, or other place so appointed as aforesaid, whilst any person or persons infected with the plague, or being under quarantine, shall be therein; and shall return, or attempt to return from thence, unless in such cases, and by such licence, as shall be directed or permitted by such order or orders made or to be made as aforesaid; it shall and may be lawful to and for the watchmen, or other persons appointed to guard or secure such house, lazaret, or other place so appointed as aforesaid, by such force as the case shall require, to compel such person so returning or attempting to return, to repair into such house, lazaret, or other place so appointed as aforesaid, there to continue and perform quarantine: and in case such person shall actually escape out of such house, lazaret, or other place where he or she shall be so placed for performance of quarantine, before he or she shall have fully performed the same, he or she shall be adjudged guilty of felony, and shall suffer death as a felon, without benefit of clergy.

Sett. 11. " And it is hereby further enacted, That if any officer or officers of his majesty's customs, or any other officer or officers, person or persons whatsoever, to whom it doth or shall appertain, to execute any order or orders made or to be made concerning quarantine, or the prevention of infection, and notified as aforesaid, or to see the same put in execution, shall be guilty of any wilful breach or neglect of his or their duty in that behalf, every such officer and person so offending shall forfeit his office

office or employment in the customs, or any other office or employment, and shall become from thenceforth incapable to hold or enjoy the same, or to take a new grant thereof, and forfeit the sum of one hundred pounds, one moiety thereof to the king, his heirs and successors, and the other moiety to him or them who shall or will sue for the same by action of debt, bill, plaint, or information, in any of his majesty's courts of record at *Westminster, Edinburgh, Dublin*, or in the proper courts of the isles of *Guernsey, Jersey, Alderney, Sark or Man*, respectively; and if any such officer or person shall embezzle, or shall knowingly and willingly damage any goods performing quarentine under his direction, he shall be liable to pay treble damages, and full costs of suit.

and if he embezzle any goods, to pay treble damages.

Sett. 12. " And whereas certain species of goods and merchandizes are more especially liable to retain infection, and may be brought from places infected into other countries, and from thence imported into his majesty's dominions in ships not obliged to perform quarentine; be it enacted by the authority aforesaid, That all such goods and merchandizes as are or shall be particularly specified for that purpose, in any order or orders made or to be made concerning quarentine, and the prevention of infection as aforesaid, which shall be imported into any of his majesty's dominions, from any foreign country or place, in any ship or vessel whatsoever, shall be subject and liable to such order or orders made or to be made concerning quarentine, and the prevention of infection as aforesaid.

Goods specified to be liable to quarentine.

Sett. 13. " And it is hereby further enacted, That after quarentine shall have been duly performed by any ship or vessel, person or persons, obliged to perform quarentine, according to such order or orders made as aforesaid, and this act, and upon proof to be made by the oaths of the master, or other person having charge of such ship or vessel, and of two of the persons belonging to such ship or vessel, or upon proof to be made by the oaths of two or more credible witnesses, before the customer, comptroller, or collector of the port where such quarentine shall be performed, or the next port thereunto, or before any of their deputies; or any justice of the peace living near to such port, or where such quarentine shall have been performed within any of the said isles of *Guernsey, Jersey, Alderney, Sark, or Man*, before any two jurats or magistrates of any of the said isles respectively, (which persons are hereby authorized and required to administer such oath) that such ship or vessel, and all and every such person and persons respectively, have duly performed quarentine as aforesaid; and that the ship or vessel, and all and every such person and persons, are free from infection; and after producing a certificate to that purpose, signed by the chief officer who superintended the quarentine of the said ship, then and in the said respective cases such customer, comptroller, or collector, or any of their deputies, together with the said justice of the peace, or such jurats or magistrates as aforesaid respectively, are hereby required to give a certificate thereof; and thereupon such ship or vessel, and all and every such person and persons so having performed quarentine, shall be liable to no men to be distressed further restraint or detention upon the same account, for which such ship,

On proof that the vessel hath performed quarentine,

that the same is free from infection; and a certificate from the officer, &c.

the ship and men to be distressed.

ship or vessel, person or persons, shall have performed quarentine as aforesaid.

No fee to be taken.

Secl. 14. " And it is hereby further enacted, That the officer before whom such oath shall be made, and by whom such certificate shall be given, shall for such respective oath and certificate demand or take no fee or reward whatsoever.

Orders to be complied with for the airing of goods; and on certificate and proof

Secl. 15. " Provided nevertheless, and it is hereby enacted, That all goods, wares, and merchandizes, liable to quarentine as aforesaid, shall be opened and aired in such place or places, and for such time, and in such manner, as shall be directed by his majesty, his heirs or successors, by such order or orders to be made as aforesaid; and after such orders shall have been duly complied with, and a certificate thereof given by the chief officer appointed to superintend the quarentine and airing of such goods, wares, and merchandizes, and proof shall be made thereof, by the oaths of two or more credible witnesses, before the customer, comptroller, or collector of the port lying next to such place or places where such goods, wares, or merchandizes, shall have been opened and aired as aforesaid, or any of their deputies, or any justice of the peace living near the same, or before any two jurats or magistrates of the said isles of *Guernsey*, *Jersey*, *Alderney*, *Sark* or *Man* respectively, (who are hereby authorized and required to administer such oath) upon certificate and return of such proof by such customer, comptroller, or collector, or any of their deputies, or such two jurats or magistrates as aforesaid, (who are hereby respectively required to make such certificate and return to the commissioners appointed for the management of the customs of *Great Britain* or *Ireland*, or to the governor or commander in chief, being upon the place, in the isles of *Guernsey*, *Jersey*, *Alderney*, *Sark* or *Man* respectively) such goods, wares, and merchandizes, shall be forthwith discharged from any restraint or detention upon the same account, by order of the said commissioners, or any two of them, or of the said governor or commander in chief of any of the said isles as aforesaid respectively; for every of which oath, certificate, and order, no fee or reward whatsoever shall be demanded or taken.

the goods to be discharged.

Officer demanding a fee for such oath or certificate, to forfeit

Secl. 16. " Provided always, and be it enacted, That if any officer or other person shall demand or take any fee or reward whatsoever for any such oath, order, or certificate, to be administered or made in pursuance of this act, every person so offending shall forfeit the sum of one hundred pounds, one moiety thereof to his majesty, his heirs and successors, and the other moiety to him or them who shall sue for the same, by action of debt, bill, plaint, or information, in any of his majesty's courts of record at *Westminster*, *Edinburgh*, *Dublin*, or in the proper courts of *Guernsey*, *Jersey*, *Alderney*, *Sark* or *Man* respectively, in which case treble costs shall be allowed to either party as in other cases.

Superintendent of the quarentine, or watchman, acting contrary to their duty,

Secl. 17. " And be it further enacted by the authority aforesaid, That if any officer or other person appointed to see quarentine duly performed, or any person placed or appointed as a watchman upon any house, lazaret, ship, or other place, for performance of quarentine, in pursuance of this act,

act, shall desert from their duty when employed on the said business of quarantine, or shall knowingly and willingly permit or suffer any person, ship, goods or merchandizes, to depart or be conveyed out of such house, lazaret, ship, or other place respectively appointed for performance of quarantine, unless in such cases, and by such licence, as are or shall be directed or permitted by some order or orders made or to be made as aforesaid; or if any person directed as aforesaid to give a certificate of a ship's having duly performed her quarantine or airing, shall knowingly give a false certificate; then and in every of the said cases, every such officer and person so offending shall suffer death as in cases of felony, without benefit of clergy.

SECT. 18. "And be it further enacted by the authority aforesaid, That if any person or persons shall knowingly or wilfully conceal from the officers of quarantine, or shall clandestinely convey any letters, goods, wares, or merchandizes from any ship under quarantine, or liable to perform quarantine, by any such order to be made as aforesaid, or from any lazaret or other place where goods shall be performing quarantine, every such person so offending shall suffer death, as in cases of felony, without benefit of clergy.

SECT. 19. "And whereas it is notorious, that notwithstanding the many good laws made to prevent the clandestine importation of customable and prohibited goods and merchandizes, a pernicious trade of that kind is still carried on, for the most part in open boats or vessels of small burthen, which privately and in the night put into creeks and secret places on the coast, thereby escaping the observation of the officers of the customs, which practices may prove highly detrimental to the safety of these kingdoms during a time of infection; for prevention thereof, be it enacted by the authority aforesaid, That when any part of *Great Britain, Ireland, or the isles of Guernsey, Jersey, Alderney, Sark or Man, or France, Spain, Portugal, or the Low Countries*, shall be infected with the plague, it shall and may be lawful to and for his majesty, his heirs and successors, by his or their proclamation to prohibit and restrain all small boats and vessels, under the burthen of twenty tons, from sailing or passing out of any port or place of *Great Britain or Ireland, or the isles of Guernsey, Jersey, Alderney, Sark and Man*, or any of them, until security be first given by the master of every such boat or vessel respectively, to the satisfaction of the principal officer of the customs, or the chief magistrate of the port or place from whence such boat or vessel shall sail, by bond taken to the king, his heirs or successors, with sufficient sureties, in the penalty of three hundred pounds, with condition that if such boat or vessel shall not go to, or touch at any country, port or place to be mentioned for that purpose in such proclamation; and if the master or other person having charge of such boat or vessel, and all and every mariner and mariners, passenger and passengers going in such boat or vessel shall, during the time aforesaid, not go on board any other ship or vessel at sea, and if such master or other person having charge of such boat or vessel shall not permit or suffer any person

or officer giving a false certificate, to suffer death.

Persons concealing or clandestinely conveying letters or goods from any ship under quarantine, or from any lazaret, to suffer death.

During the infection in the places herein mentioned, small vessels to give security not to touch at any country which shall be mentioned in a proclamation.

Vessels sailing
without such
security to be
forfeited ;

and the master
and crew to
forfeit 20l.

Orders con-
cerning qua-
rentine to be
read in
churches, &c.

person or persons to come on board such boat or vessel at sea from any other ship or vessel, and shall not, during the time aforesaid, receive any goods and merchandizes whatsoever out of any other ship or vessel, then such bond shall be void, or to such effect ; for the making of which bond no fee or reward whatsoever shall be taken ; and in case any boat or vessel for which such security shall be required by such proclamation, shall set sail or pass out of any port or place of *Great Britain* or *Ireland*, or the islands of *Guernsey*, *Jersey*, *Alderney*, *Sark* and *Man*, or any of them respectively, before such security be given as aforesaid, every such boat or vessel so sailing or passing out of any port or place, contrary to the true intent and meaning of this act, together with her tackle, apparel, and furniture, shall be forfeited to the king, his heirs and successors, and shall and may be seized, sued for, and recovered in his majesty's court of exchequer at *Westminster*, *Edinburgh*, or *Dublin*, or in the proper courts of the isles of *Guernsey*, *Jersey*, *Alderney*, *Sark* or *Man*, respectively, to the use of his majesty, his heirs and successors ; and the master of, and every mariner sailing in any such boat or vessel, being thereof lawfully convicted upon his or their appearance or default, upon the oath or oaths of one or more credible witness or witnesses, by one or more justice or justices of the peace where such offender shall be found (which oath such justice or justices of the peace are hereby impowered and required to administer) shall forfeit the sum of twenty pounds ; one moiety thereof to the informer, the other moiety to the poor of the parish where such offender shall be found ; the same to be levied by distress and sale of the offender's goods, by warrant under the hand and seal or the hands and seals of such justice or justices before whom such offender shall be convicted as aforesaid ; and for want of sufficient distress, every such offender shall by such justice or justices be committed to prison, there to remain without bail or mainprize for the space of three months ; and in case any such offender shall be found in any of the said isles of *Guernsey*, *Jersey*, *Alderney*, *Sark* or *Man*, and shall be lawfully convicted of such offence in any action or suit to be founded on this act, in the proper court of any of the said isles where he shall be so found, such offender shall forfeit the sum of twenty pounds, one moiety thereof to the informer, and the other moiety to the poor of the parish or place where such offender shall be found ; and in default of paying such penalty shall suffer imprisonment without bail or mainprize for the space of three months.

Sec. 20. “ And, to the end that all persons may know how to demean themselves in the premises, be it further enacted by the authority aforesaid, That when and as often as his majesty, his heirs or successors, shall make any order or orders concerning quarentine, and the prevention of infection, and notify the same by proclamation, or cause the same to be published in the *London Gazette*, as aforesaid ; such proclamation, or order or orders in council as aforesaid, shall be publicly read upon the next *Sunday* on which divine service shall be performed after the receipt of the same, and the first *Sunday* in every month afterwards (during the time such orders

orders shall continue in force) immediately after the prayers, in all parish churches, and other places set apart for divine worship, within such countries and places as shall be specified for that purpose in such proclamation or orders respectively.

Sett. 21. " And be it further enacted by the authority aforesaid, That if any action or suit shall be commenced against any person or persons for any thing done in pursuance of this present act, the defendant or defendants in such action or suit, may plead the general issue, and give this act, and the special matter in evidence, at any trial to be had thereupon; and that the same was done in pursuance and by the authority of the said act; and if it shall appear so to have been done, then the jury shall find for the defendant or defendants; and if the plaintiff shall be nonsuited, or discontinue his action after the defendant or defendants shall have appeared; or if judgment shall have been given upon any verdict or demurrer against the plaintiff, the defendant or defendants shall and may recover treble costs, and have the like remedy for the same, as the defendant or defendants hath or have in other cases by law. General issue. Treble costs.

Sett. 22. " Provided always, and it is hereby enacted, That no attainder of felony, by virtue of this act, shall extend to work any corruption of blood, or forfeiture of any goods, chattels, lands, tenements or hereditaments. Limitation of attainder of felony on this act.

Sett. 23. " And it is hereby further enacted by the authority aforesaid, That this act, and the several clauses and provisions therein contained, shall commence and take effect from and after the first day of March one thousand seven hundred and fifty-four. Commencement of this act.

Players.

STAT. 10 Geo. 2, c. 28, [A. D. 1737, intituled,] " An act to explain and amend so much of an act made in the twelfth year of the reign of queen Anne intituled, *An act for reducing the laws relating to rogues, vagabonds, sturdy beggars, and vagrants, into one act of parliament; and for the more effectual punishing such rogues, vagabonds, sturdy beggars, and vagrants, and sending them whither they ought to be sent*, as relates to common players of interludes."

Sett. 1. " Whereas by an act of parliament made in the twelfth year of the reign of her late majesty queen Anne intituled, *An act for reducing the laws relating to rogues, vagabonds, sturdy beggars, and vagrants, into one act of parliament, and for the more effectual punishing such rogues, vagabonds, sturdy beggars, and vagrants, and sending them whither they ought to be sent*, it was

enacted, That all persons pretending themselves to be patent gatherers, collectors for prisons, gaols, or hospitals, and wandering abroad for that purpose, all fencers, bearwards, common players of interludes, and other persons therein named and expressed, shall be deemed rogues and vagabonds: and whereas some doubts have arisen concerning so much of the said act as relates to common players of interludes: now for explaining and amending the same, be it declared and enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That from and after the twenty-fourth day of *June*, one thousand seven hundred and thirty-seven, every person who shall, for hire, gain, or reward, act, represent, or perform, or cause to be acted, represented, or performed, any interlude, tragedy, comedy, opera, play, farce, or other entertainment of the stage, or any part or parts therein, in case such person shall not have any legal settlement in the place where the same shall be acted, represented, or performed, without authority by virtue of letters patent from his majesty, his heirs, successors, or predecessors, or without licence from the lord chamberlain of his majesty's household for the time being, shall be deemed to be a rogue and a vagabond within the intent and meaning of the said recited act, and shall be liable and subject to all such penalties and punishments, and by such methods of conviction, as are inflicted on or appointed by the said act for the punishment of rogues and vagabonds who shall be found wandering, begging, and misordering themselves, within the intent and meaning of the said recited act.

Persons acting plays, &c. in any place where they have not a settlement, or without authority, &c.

to be deemed vagabonds,

and forfeit 50l.

No new plays, or additions to old ones, to be acted, unless a copy thereof be sent to the lord chamberlain, &c.

SecT. 2. “ And be it further enacted by the authority aforesaid, That if any person having or not having a legal settlement as aforesaid shall, without such authority or licence as aforesaid, act, represent, or perform, or cause to be acted, represented, or performed, for hire, gain, or reward, any interlude, tragedy, comedy, opera, play, farce, or other entertainment of the stage, or any part or parts therein, every such person shall for every such offence forfeit the sum of fifty pounds; and in case the said sum of fifty pounds shall be paid, levied, or recovered, such offender shall not for the same offence, suffer any of the pains or penalties inflicted by the said recited act.

SecT. 3. “ And be it further enacted by the authority aforesaid, That from and after the said twenty-fourth day of *June*, one thousand seven hundred and thirty-seven, no person shall, for hire, gain, or reward, act, perform, represent, or cause to be acted, performed, or represented, any new interlude, tragedy, comedy, opera, play, farce, or other entertainment of the stage, or any part or parts therein; or any new act, scene, or other part added to any old interlude, tragedy, comedy, opera, play, farce; or other entertainment of the stage, or any new prologue or epilogue, unless a true copy thereof be sent to the lord chamberlain of the king's household for the time being, fourteen days at least before the acting, representing, or performing thereof, together with an account of the playhouse, or other place, where the same shall be, and the time when the same is intended to

be

be first acted, represented, or performed, signed by the master or manager, or one of the masters or managers of such playhouse, or place, or company of actors therein.

Secl. 4. “ And be it enacted by the authority aforesaid, That from and after the said twenty-fourth day of *June*, one thousand seven hundred and thirty-seven, it shall and may be lawful to and for the said lord chamberlain for the time being, from time to time, and when, and as often as he shall think fit, to prohibit the acting, performing, or representing, any interlude, tragedy, comedy, opera, play, farce, or other entertainment of the stage, or any act, scene, or part thereof, or any prologue or epilogue; and persons and in case any person or persons shall, for hire, gain, or reward, act, perform, or represent, or cause to be acted, performed, or represented, any new interlude, tragedy, comedy, opera, play, farce, or other entertainment of the stage, or any act, scene, or part thereof, or any new prologue or epilogue, before a copy thereof shall be sent as aforesaid with such account as aforesaid, or shall, for hire, gain, or reward, act, perform, or represent, or cause to be acted, performed, or represented, any interlude, tragedy, comedy, opera, play, farce, or other entertainment of the stage, or any act, scene, or part thereof, or any prologue or epilogue, contrary to such prohibition as aforesaid; every person so offending, shall, for every such offence forfeit the sum of fifty pounds, and every grant, licence, and authority (in case there be any such) by or under which the said master or masters, or manager or managers set up, formed, or continued such playhouse, or company of actors, shall cease, determine, and become absolutely void to all intents and purposes whatsoever.

Secl. 5. “ Provided always, That no person or persons shall be authorized by virtue of any letters patent from his majesty, his heirs, successors or predecessors, or by the licence of the lord chamberlain of his majesty's household for the time being, to act, represent, or perform, for hire, gain, or reward, any interlude, tragedy, comedy, opera, play, farce, or other entertainment of the stage, or any part or parts therein, in any part of *Great Britain*, except in the city of *Westminster*, and within the liberties thereof, and in such places where his majesty, his heirs, or successors, shall in their royal persons reside, and during such residence only; any thing in this act contained to the contrary in any wise notwithstanding.

Secl. 6. “ And be it further enacted by the authority aforesaid, That all the pecuniary penalties inflicted by this act for offences committed within that part of *Great Britain* called *England*, *Wales*, and the town of *Berwick upon Tweed*, shall be recovered, by bill, plaint, or information, in any of his majesty's courts of record at *Westminster*, in which no essoin, protection, or wager of law shall be allowed; and for offences committed in that part of *Great Britain* called *Scotland*, by action or summary complaint before the court of session or judiciary there; or for offences committed in any part of *Great Britain*, in a summary way before two justices of the peace for any county, stewardry, riding, division, or liberty, where any such offence shall be committed, by the oath or oaths of one or more credible witnesses or witnesses, or by the confession of the offender, the same to be levied by distress

distress and sale of the offenders goods and chattels, rendering the overplus to such offender, if any there be above the penalty and charge of distress; and for want of sufficient distress the offender shall be committed to any house of correction in any such county, stewardry, riding, or liberty, for any time not exceeding six months, there to be kept to hard labour, or to the common gaol of any such county, stewardry, riding, or liberty, for any time not exceeding six months, there to remain without bail or mainprize; and if any person or persons shall think him, her, or themselves aggrieved by the order or orders of such justices of the peace, it shall and may be lawful for such person or persons to appeal therefrom to the next general quarter sessions to be held for the said county, stewardry, riding, or liberty, whose order therein shall be final and conclusive; and the said penalties for any offence against this act shall belong, one moiety thereof to the informer or person suing or prosecuting for the same, the other moiety to the poor of the parish where such offence shall be committed.

Persons acting
in public
houses includ-
ed in this act.

Sec. 7. " And be it further enacted, by the authority aforesaid, That if any interlude, tragedy, comedy, opera, play, farce, or other entertainment of the stage, or any act, scene, or part thereof, shall be acted, represented, or performed in any house or place, where wine, ale, beer, or other liquors shall be sold or retailed, the same shall be deemed to be acted, represented, and performed for gain, hire, and reward.

Limitation of
actions.

Sec. 8. " And be it further enacted by the authority aforesaid, That no person shall be liable to be prosecuted for any offence against this act, unless such prosecution shall be commenced within the space of six kalendar months after the offence committed; and if any action, or suit, shall be commenced or brought against any justice of the peace or any other person for doing, or causing to be done, any thing in pursuance of this act, such action or suit shall be commenced within six kalendar months next after the fact done; and the defendant or defendants in such action or suit

General issue.

shall and may plead the general issue, and give the special matter in evidence; and if upon such action or suit, a verdict shall be given for the defendant or defendants, or the plaintiff or plaintiffs, or prosecutor shall become nonsuit, or shall not prosecute his, or their said action or suit, then

Treble costs.

the defendant or defendants shall have treble costs, and shall have the like remedy for the same, as any defendant or defendants have in other cases by law.

Polygamy.

BIGAMY is, where a man has two wives successively ; polygamy, where he has several wives at the same time. 3 *Inst.* 88. *Stam.* 134.

STAT. I Jac. I, c. 11, [A. D. 1603, intituled] "An act to restrain all persons from marriage until their former wives and former husbands be dead."

Seet. 1. "Forasmuch as divers evil disposed persons being married, run out of one country into another, or into places where they are not known, and there become to be married, having another husband or wife living, to the great dishonour of God, and utter undoing of divers honest mens children, and others ; (2) Be it therefore enacted by the king's majesty, with the consent of the lords spiritual and temporal, and of the commons in this present parliament assembled, That if any person and persons within his majesty's dominions of *England* and *Wales*, being married, or which hereafter shall marry, do at any time after the end of the session of this present parliament, marry any person or persons, the former wife being alive ; That then every such offence shall be felony, and the person and persons so offending shall suffer death as in cases of felony ; (3) and the party and parties so offending, shall receive such and the like proceeding, trial and execution in such county where such person or persons shall be apprehended, as if the offence had been committed in such county where such person or persons shall be taken or apprehended.

Seet. 2. "Provided always, That this act, nor any thing therein contained, shall extend to any person or persons whose husband or wife shall be continually remaining beyond the seas by the space of seven years together, or whose husband or wife shall absent him or herself the one from the other by the space of seven years together, in any part within his majesty's dominions, the one of them not knowing the other to be living within that time.

Seet. 3. "Provided also, and be it enacted by the authority aforesaid, That this act nor any thing herein contained, shall extend to any person or persons that are or shall be at the time of such marriage divorced by any sentence had or hereafter to be had in the ecclesiastical court ; (2) or to any person or persons where the former marriage hath been or hereafter shall be by sentence in the ecclesiastical court, declared to be void and of no effect ; nor to any person or persons for or by reason of any former marriage had or made, or hereafter to be had or made within age of consent.

Seet. 4. "Provided also, That no attainder for this offence made felony by this act, shall make or work any corruption of blood, loss of dower, or disinherison of heir or heirs.

The

To what persons this statute shall not extend.
Nocorruption of blood, loss of dower or inheritance.

The following commentary on this act is taken from lord Coke's 3 Inst. p. 88, 89.

This is the first act of parliament that was made against polygamy, *polygamia est plurium simul virorum, uxorumve connubium.*

The difference between bigamy, or trigamy, &c. and polygamy is, *quia bigamus seu trigamus, &c. est qui diversis temporibus, & successive duas, seu tres, &c. uxores habuit. Polygamus, qui duas vel plures simul duxit uxores.*

If any person.] This law is general, and extendeth to all persons, of what estate, or degree soever.

If the man be above the age of fourteen, which is his age of consent, and the woman above the age of twelve, which is her age of consent, though they be within the age of one and twenty, they are within the danger of this law, which appeareth by this, that this act extendeth not to a former marriage made within the age of consent, as hereafter shall appear.

Being married, &c.] This extendeth to a marriage *de facto*, or voidable by reason of a precontract, or of consanguinity, or of affinity, or the like: for it is a marriage in judgment of law until it be avoided, and therefore, though neither marriage be *de jure*, yet they are within this statute.

Out of the generality of this law, there are five exceptions: first, it extendeth not to any person or persons, whose husband or wife be continually remaining beyond the seas, by the space of seven years together. By this branch notice is not material, in respect of the commorancy beyond sea.

Secondly, it extends not, when the husband or wife shall absent him or herself, the one from the other, by the space of seven years in any parts within his majesty's dominions, the one of them not knowing the other to be living within that time. Here notice is material, in respect the commorance is within this realm.

Thirdly, nor to any person or persons, that at the time of such marriage be divorced by any sentence had in the ecclesiastical court.

There are two kinds of divorces, the one that dissolveth the marriage *à vinculo matrimonii*; as for precontract, consanguinity, &c. and the other *à mensa & thoro*; as for adultery, because that divorce by reason of adultery, cannot dissolve the marriage *à vinculo matrimonii*, for that the offence is after the just and lawful marriage. This branch in respect of the generality of the words, privileges the offender from being a felon, as well in the case of the divorce *à mensa & thoro*, as where it is *à vinculo matrimonii*, and yet in the case of the divorce *à mensa & thoro*, the second marriage is void, living the former wife or husband. And if there be a divorce *à vinculo matrimonii*, and the adverse party appeal, which is a continuance of the former marriage, and suspend the sentence, yet after such a divorce, the party marrying is no felon within this statute, in respect of the generality of this branch, although the marriage be not lawful.

1

Fourthly,

Fourthly, nor to any person or persons, where the former marriage is by sentence in the ecclesiastical court declared to be void and of no effect.

Fifthly, nor to any person or persons, for or by reason of any former marriage made within age of consent: hereby it appeareth that the makers of the law intended that this act should extend to every person above the age of consent.

If the man be above fourteen, and the wife under twelve, or if the wife be above twelve, and the man under fourteen, yet may the husband or wife so above the age of consent, disagree to the espousals, as well as the party that is under the age of consent; for the advantage of disagreement must be reciprocal. And so it was resolved by the judges and civilians, *Trin. 42 Eliz.* in the king's bench, in a writ of error between *Babington* and *Warner*. So as if either party be within age of consent, it is no former marriage within this act.

The offender against this statute may have the benefit of his clergy.

If he be a nobleman and lord of parliament, he shall be tried by his peers, albeit there be no provision special for it: for of common right, (that we may say it once for all) in case of treason, felony, and misprision of treason or of felony (as hath been said before) he is to be tried by his peers.

I find that by the ancient law of *England*, That if any Christian man did marry with a woman that was a Jew, or a Christian woman that married with a Jew, it was felony, and the party so offending should be burnt alive.

Contrahentes cum Judeis Judeabus, Peccantes, & Sodomitæ in terra vivi confodiantur, &c. Fleta lib. 1. ca. 35. § Contrahentes. Thus far lord Coke.

If the first marriage was beyond sea, and the latter in *England*, the party may be indicted here, because the latter marriage makes the offence; but if the first marriage was in *England*, and the latter beyond the sea, it seemeth that the offender cannot be indicted here, because the offence was not within the kingdom. *Kely. 79, 80.*

On a prosecution upon this statute, the first and true wife is not to be allowed as a witness against the husband; but it seems clear that the second wife may be admitted to prove the second marriage, for she is not his wife so much as *de facto*. *1 Hale's Hist. 693.*

A. takes *B.* to husband in *England*, and after takes *C.* to husband in *Ireland*, she is not indictable in *England*, because the offence was committed out of this kingdom. But if *A.* marry a husband in *Ireland*, and come into *England*, and marry a second husband here, it is felony. *1 Hale's Hist. 693.*

A. takes *B.* to husband in *Holland*, and then in *Holland* takes *C.* to husband, living *B.* and then *B.* dies, and living *C.* she marries *D.* this is not marrying a second husband the former being alive; for the marriage to *C.* living *B.* was simply void, and so he was not her husband; but if *B.* had been living, this had been felony to marry *D.* in *England*. *1 Hale's Hist. 693.*

Poor.

STAT. 43 *Eliz. c. 2*, [*A.D. 1601, intituled*] "An act for the relief of the poor."

- Who shall be overseers for the poor; their office, duty, and account, &c. 39 *Eliz. c. 3*, mod. cases in law 39, 344. 4 *Mod. 157*. *Cro. Car. 92*.
- Who shall be taxed towards the relief of the poor. A convenient stock shall be provided to set the poor on work.
- The names of such as receive collection to be registered in a book. 3 & 4 *W. & M. c. 11, f. 11*.
- The overseers shall meet once every month. 2 *Bulstr. 345*, &c. 358. 5 *Mod. 179*.
- "Be it enacted by the authority of this present parliament, That the churchwardens of every parish, and four, three, or two substantial householders there, as shall be thought meer, having respect to the proportion and greatness of the same parish and parishes, to be nominated yearly in *Easter* week, or within one month after *Easter*, under the hand and seal of two or more justices of the peace in the same county, whereof one to be of the *quorum*, dwelling in or near the same parish or division where the same parish doth lie, shall be called overseers of the poor of the same parish: and they, or the greater part of them, shall take order from time to time, by and with the consent of two or more such justices of peace, as is aforesaid, for setting to work the children of all such whose parents shall not by the said church-wardens and overseers, or the greater part of them, be thought able to keep and maintain their children; and also for setting to work all such persons, married or unmarried, having no means to maintain them, and use no ordinary and daily trade of life to get their living by: and also to raise weekly, or otherwise (by taxation of every inhabitant, parson, vicar, and other, and of every occupier of lands, houses, tithes impropriate, propriations of tithes, coal-mines, or saleable underwoods in the said parish, in such competent sum and sums of money as they shall think fit) a convenient stock of flax, hemp, wool, thread, iron, and other ware and stuff to set the poor on work: and also competent sums of money for and towards the necessary relief of the lame, impotent, old, blind, and such other among them, being poor, and not able to work, and also for the putting out of such children to be apprentices, to be gathered out of the same parish, according to the ability of the same parish, and to do and execute all other things, as well for the disposing of the said stock, as otherwise concerning the premisses, as to them shall seem convenient:
- Sec. 2.* "Which said church-wardens and overseers so to be nominated, or such of them as shall not be let by sickness, or other just excuse, to be allowed by two such justices of peace, or more, as is aforesaid, shall meet together at the least once every month, in the church of the said parish, upon the *Sunday* in the afternoon, after divine service, there to consider of some good course to be taken, and of some meet order to be set down in the premisses; (2) and shall within four days after the end of their year, and after other overseers nominated, as aforesaid, make and yield up to such two justices of peace, as is aforesaid, a true and perfect account of all

all sums of money by them received, or rated and fessed, and not received, and also of such stock as shall be in their hands, or in the hands of any of the poor to work, and of all other things concerning their said office; (3) and such sum or sums of money as shall be in their hands, shall pay The overseers and deliver over to the said church-wardens and overseers newly nominated and appointed, as aforesaid; (4) upon pain that every one of them absenting themselves without lawful cause, as aforesaid, from such monthly meeting for the purpose aforesaid, or being negligent in their office, or in the execution of the orders aforesaid, being made by and with the assent of the said justices of peace, or any two of them before-mentioned, to forfeit for every such default of absence or negligence, twenty shillings.

Sett. 3. " And be it also enacted, That if the said justices of peace do perceive, that the inhabitants of any parish are not able to levy among themselves sufficient sums of money for the purposes aforesaid; That then the said two justices shall and may tax, rate and assess, as aforesaid, any other of other parishes, or out of any parish within the hundred where the said parish is, to pay such sum and sums of money to the church-wardens and overseers of the said poor parish for the said purposes, as the said justices shall think fit, according to the intent of this law: (2) And if the said hundred shall not be thought to the said justices able and fit to relieve the said several parishes not able to provide for themselves, as aforesaid, then the justices of peace at their general quarter-sessions, or the greater number of them, shall rate and assess, as aforesaid, any other of other parishes, or out of any parish within the said county for the purposes aforesaid, as in their discretion shall seem fit.

Sett. 4. " And that it shall be lawful, as well for the present as subsequent church-wardens and overseers, or any of them, by warrant from any two such justices of peace, as is aforesaid, to levy as well the said sums of money, and all arrearages, of every one that shall refuse to contribute according as they shall be assessed, by distress and sale of the offender's goods, as the sums of money or stock which shall be behind upon any account to be made, as aforesaid, rendring to the parties the overplus; (2) and in defect of such distress, it shall be lawful for any such two justices of the peace to commit him or them to the common gaol of the county, there to remain without bail or mainprize, until payment of the said sum, arrearages and stock: (3) and the said justices of peace, or any one of them, to send to the house of correction or common gaol, such as shall not imploy themselves to work, being appointed thereunto, as aforesaid: (4) and also any such two justices of peace to commit to the said prison every one of the said church-wardens and overseers which shall refuse to account, there to remain without bail or mainprize, until he have made a true account, and satisfied and paid so much, as upon the said account shall be remaining in his hands.

Sett. 5. " And be it further enacted, That it shall be lawful for the said church-wardens and overseers, or the greater part of them, by the assent of any two justices of the peace aforesaid, to bind any such children, as

A provision where the inhabitants of any parish are not able to relieve the poor, 2 Bull. 351. 1 Vent. 350. Church-wardens, &c. may make a rate to reimburse themselves, &c. 13 & 14 Ca. 2, c. 12, f. 18.

A remedy for the levying of the money assessed.

Imprisonment in default of distress.

Imprisonment of those that will not work.

Refusers to account, imprisoned.

Binding of children apprentices. 1 Jac. 1, c.

3 Car. 1, c. 4.
Farther provisions relating hereto.

8 & 9 W. 3, c. 30, sect. 5.
Parish apprentices may be turned over to the sea service, by 2 & 3 Annæ, c. 6, sect. 6.

Building of houses on the waste for the poor to inhabit.

31 Eliz. c. 7.

A remedy for them who find themselves grieved with any tax

Poor persons relieved by their parents or children.
2 Balistr. 344.

aforesaid, to be apprentices, where they shall see convenient, till such man child shall come to the age of four and twenty years, and such woman-child to the age of one and twenty years, or the time of her marriage; the same to be as effectual to all purposes, as if such child were of full age, and by indenture of covenant bound him or herself. (2) And to the intent that necessary places of habitation may more conveniently be provided for such poor impotent people; (3) be it enacted by the authority aforesaid, That it shall and may be lawful for the said church-wardens and overseers, or the greater part of them, by the leave of the lord or lords of the manor, whereof any waste or common within their parish is or shall be parcel, and upon agreement before with him or them made in writing, under the hands and seals of the said lord or lords, or otherwise, according to any order to be set down by the justices of peace of the said county at their general quarter-sessions, or the greater part of them, by like leave and agreement of the said lord or lords, in writing under his or their hands and seals, to erect, build, and set up in fit and convenient places of habitation in such waste or common, at the general charges of the parish, or otherwise of the hundred or county, as aforesaid, to be taxed, rated, and gathered in manner before expressed, convenient houses of dwelling for the said impotent poor; (4) and also to place inmates, or more families than one in one cottage or house; one act made in the one and thirtieth year of her majesty's reign, intituled, *An act against the erecting and maintaining of cottages*, or any thing therein contained to the contrary notwithstanding: (5) which cottages and places for inmates shall not at any time after be used or employed to or for any other habitation, but only for impotent and poor of the same parish, that shall be there placed from time to time by the church-wardens and overseers of the poor of the same parish, or the most part of them, upon the pains and forfeitures contained in the said former act made in the said one and thirtieth year of her majesty's reign.

Seet. 6. " Provided always, That if any person or persons shall find themselves grieved with any sels or tax, or other act done by the said church-wardens, and other persons, or by the said justices of peace; that then it shall be lawful for the justices of peace, at their general quarter-sessions, or the greater number of them, to take such order therein, as to them shall be thought convenient; and the same to conclude and bind all the said parties.

Seet. 7. " And be it further enacted, That the father and grandfather, and the mother and grandmother, and the children of every poor, old, blind, lame and impotent person, or other poor person not able to work, being of a sufficient ability, shall, at their own charges, relieve and maintain every such poor person in that manner, and according to that rate, as by the justices of peace of that county where such sufficient persons dwell, or the greater number of them, at their general quarter-sessions shall be assessed; (2) upon pain that every one of them shall forfeit twenty shillings for every month which they shall fail therein,

Sett. 8. " And be it further hereby enacted, that the mayors, bailiffs, or other head officers of every town and place corporate, and city within this realm, being justice or justices of peace, shall have the same authority by virtue of this act, within the limits and precincts of their jurisdictions, as well out of sessions, as at their sessions, if they hold any, as is herein limited, prescribed and appointed to justices of peace of the county, or any two or more of them, or to the justices of the peace in their quarter-sessions, to do and execute for all the uses and purposes in this act prescribed, and no other justice or justices of peace to enter or meddle there: (2) and that every alderman of the city of London within his ward, shall and may do and execute in every respect, so much as is appointed and allowed by this act to be done and executed by one or two justices of peace of any county within this realm.

Officers of corporate towns have the authority of justices of peace.

Aldermen of London.

Sett. 9. " And be it also enacted, That if it shall happen any parish to extend itself into more counties than one, or part to lie within the liberties of any city, town or place corporate, and part without, That then as well the justices of peace of every county, as also the head officers of such city, town or place corporate, shall deal and intermeddle only in so much of the said parish as lieth within their liberties, and not any further: (2) and every of them respectively within their several limits, wards and jurisdictions, to execute the ordinances before-mentioned, concerning the nomination of overseers, the consent to binding apprentices, the giving warrant to levy taxations unpaid, the taking account of church-wardens and overseers, and the committing to prison such as refuse to account, or deny to pay the arrearages due upon their accounts; (3) and yet nevertheless, the said church-wardens and overseers, or the most part of them, of the said parishes that do extend into such several limits and jurisdictions, shall, without dividing themselves, duly execute their office in all places within the said parish, in all things to them belonging, and shall duly exhibit and make one account before the said head-officer of the town or place corporate, and one other, before the said justices of peace, or any such two of them, as is aforesaid.

A parish extending into two counties, or into two liberties.

2 Bullr. 351.

Sett. 10. " And further be it enacted by the authority aforesaid, That if in any place within this realm, there happen to be hereafter no such nomination of overseers yearly, as is before appointed, That then every justice of peace of the county, dwelling within the division where such default of nomination shall happen, and every mayor, alderman, and head-officer of city, town or place corporate where such default shall happen, shall lose and forfeit for every such default, five pounds, to be employed towards the relief of the poor of the said parish or place corporate, and to be levied, as aforesaid, of their goods, by warrant from the general sessions of the peace of the said county, or of the same city, town, or place corporate, if they keep sessions.

The justices forfeiture for not naming of overseers.

Sett. 11. " And be it also enacted by the authority aforesaid, That all penalties and forfeitures before-mentioned in this act, to be forfeited by any person or persons, shall go and be employed to the use of the poor of the same parish, and towards a stock and habitation for them, and other necessary uses and relief, as before in this act are mentioned and expressed;

How the forfeiture shall be levied and employed.

(2) and shall be levied by the said church-wardens and overseers, or one of them, by warrant from any two such justices of peace, or mayor, alderman, or head-officer of city, town or place corporate respectively within their several limits, by distress and sale thereof, as aforesaid; (3) or in defect thereof, it shall be lawful for any two such justices of peace, and the said aldermen and head-officers within their several limits, to commit the offender to the said prison, there to remain without bail or mainprize, till the said forfeitures shall be satisfied and paid.

The justices shall rate every parish to a weekly sum.
2 Bulstr. 353.

Señ. 12. "And be it further enacted by the authority aforesaid, That the justices of peace of every county or place corporate, or the more part of them, in their general sessions to be holden next after the feast of *Easter* next, and so yearly as often as they shall think meet, shall rate every parish to such a weekly sum of money as they shall think convenient; (2) so as no parish be rated above the sum of six-pence, nor under the sum of a half-penny, weekly to be paid, and so as the total sum of such taxation of the parishes in every county, amount not above the rate of two-pence for every parish within the said county: (3) which sums so taxed, shall be yearly assessed by the agreement of the parishioners within themselves, or in default thereof, by the churchwardens and petty constables of the same parish, or the more part of them: or in default of their agreement, by the order of such justice or justices of peace as shall dwell in the same parish, or (if none be there dwelling) in the parts next adjoining.

The penalty for refusing to pay money taxed.

Señ. 13. "And if any person shall refuse or neglect to pay any such portion of money so taxed, it shall be lawful for the said church-wardens and constables, or any of them, or in their default, for any justice of peace of the said limit, to levy the same by distress, and sale of the goods of the party so refusing or neglecting, rendring to the party the overplus: (2) and in default of such distress, it shall be lawful to any justice of that limit, to commit such person to the said prison, there to abide without bail or mainprize, till he have paid the same.

Relief for the prisoners of the king's bench, marshal'sea, hospitals.

Señ. 14. "And be it also enacted, That the said justices of the peace at their general quarter-sessions to be holden at the time of such taxation, shall set down what competent sums of money shall be sent quarterly out of every county or place corporate, for the relief of the poor prisoners of the king's bench and marshal'sea, and also of such hospitals and alms-houses, as shall be in the said county, and what sums of money shall be sent to every one of the said hospitals and alms-houses, so as there be sent out of every county yearly, twenty shillings at the least, to each of the said prisons of the king's bench and marshal'sea; (2) which sums ratably to be assessed upon every parish, the church-wardens of every parish shall truly collect and pay over to the high constables in whose division such parish shall be situate, from time to time, quarterly, ten days after the end of every quarter; (3) and every such constable at every such quarter-sessions in such county, shall pay over the same to two such treasurers, or to one of them, as shall by the more part of the justices of peace of the county, be elected to be the said treasurers to be chosen by the justices of peace of the said county, city, or town, or place corporate, or of others which were assessed and taxed at five pounds lands, or ten

Treasurers.

pounds

pounds goods at the least, at the tax of subsidy next before the time of the said election to be made; (4) and the said treasurers so elected, to continue for the space of one whole year in their office, and then to give up their charge, with a due account of their receipts and disbursements, at the quarter sessions to be holden next after the feast of *Easter* in every year, to such others as shall from year to year, in form aforesaid, successively be elected treasurers for the said county, city, town, or place corporate; (5) which said treasurers, or one of them, shall pay over the same to the lord chief justice of *England*, and knight marshal for the time being, equally to be divided to the use aforesaid, taking their acquittance for the same, or in default of the said chief justice, to the next antientest justice of the king's bench, as aforesaid: (6) and if any church-warden or high-constable, or his executors or administrators shall fail to make payment in form above specified, then every church-warden, his executors or administrators so offending, shall forfeit for every time the sum of ten shillings; (7) and every high constable, his executors or administrators, shall forfeit for every time, the sum of twenty shillings; (8) the same forfeitures, together with the sums behind, to be levied by the said treasurer and treasurers, by way of distress and sale of goods as aforesaid, in form aforesaid, and by them to be employed towards the charitable uses comprized in this act.

Lord chief justice of *England*; knight marshal.

The forfeiture of the church-wardens or high constables offending.

Sec. 15. " And be it further enacted, That all the superplusage of money which shall be remaining in the said stock of any county, shall by discretion of the more part of the justices of the peace in their quarter-sessions, be ordered, distributed, and bestowed for the relief of the poor hospitals of that county, and of those that shall sustain losses by fire, water, the sea, or other casualties, and to such other charitable purposes, for the relief of the poor, as to the more part of the said justices of peace shall seem convenient.

How the superplusage shall be bestowed. 2 Salk. 605.

Sec. 16. And be it further enacted, That if any treasurer elected, shall wilfully refuse to take upon him the said office of treasurer, or refuse to distribute and give relief, or to account, according to such form as shall be appointed by the more part of the said justices of peace, that then it shall be lawful for the justices of peace in their quarter-sessions, or in their default, for the justices of assize, at the assizes to be holden in the same county, to fine the same treasurer by their discretion; (2) the same fine not to be under three pounds, and to be levied by sale of his goods, and to be prosecuted by any two of the said justices of peace, whom they shall authorize.

The penalty for refusing to be treasurer, to give relief, or account.

(3) Provided always, That this act shall not take effect until the feast of *Easter* next.

This act to take effect at *Easter*.

Sec. 17. " And be it enacted, That the statute made in the nine and thirtieth year of her majesty's reign, intituled, *An act for the relief of the poor*, shall continue and stand in force until the feast of *Easter* next; (2) and that all taxations heretofore imposed and not paid, nor that shall be paid before the said feast of *Easter* next; and that all taxes hereafter before the

For what time, and to what purpose the stat. of 39 El. c. 3, shall be put in execution.

the said feast, to be taxed by virtue of the said former act, which shall not be paid before the said feast of *Easter*, shall and may after the said feast of *Easter*, be levied by the overseers and other persons in this act respectively appointed to levy taxations by distress, and by such warrant in every respect, as if they had been taxed and imposed by virtue of this act, and were not paid.

The island of
Howlands in
Essex.

SECT. 18. " Provided always, That whereas the island of *Howlands*, in the county of *Essex*, being environed with the sea, and having a chapel of ease for the inhabitants thereof, and yet the said island is no parish, but the lands in the same are situated within divers parishes far distant from the said island; (2) be it therefore enacted by the authority aforesaid, That the said justices of peace shall nominate and appoint inhabitants within the said island, to be overseers for the poor people dwelling within the said island, and that both they the said justices and the said overseers, shall have the same power and authority to all intents, considerations and purposes for the execution of the parts and articles of this act, and shall be subject to the same pains and forfeitures, and likewise that the inhabitants and occupiers of the lands there, shall be liable and chargeable to the same payments, charges, expences, and orders, in such manner and form as if the same island were a parish; (3) in consideration whereof, neither the said inhabitants or occupiers of land within the said island, shall not be compelled to contribute towards the relief of the poor of those parishes wherein their houses or lands which they occupy within the said island are situated, for or by reason of their said habitations or occupings, other than for the relief of the poor people within the said island, neither yet shall the other inhabitants of the parishes wherein such houses or lands are situated, be compelled, by reason of their residency or dwelling, to contribute to the relief of the poor inhabitants within the said island,

The defend-
ant's plea in a
suit commen-
ced against
him upon this
statute.

SECT. 19. " And be it further enacted, That if any action of trespass, or other suit shall happen to be attempted and brought against any person or persons, for taking of any distress, making of any sale, or any other thing doing, by authority of this present act, the defendant or defendants in any such action or suit, shall and may either plead Not guilty, or otherwise make avowry, cognizance, or justification for the taking of the said distresses, making of sale, or other thing doing by virtue of this act, alledging in such avowry, cognizance or justification, that the said distress, sale, trespass, or other thing, whereof the plaintiff or plaintiffs complained, was done by authority of this act, and according to the tenor, purport, and effect of this act, without any expressing or rehearsal of any other matter or circumstance contained in this present act: (2) to which avowry, cognizance, or justification, the plaintiff shall be admitted to reply, that the defendant did take the said distress, made the said sale, or did any other act or trespass supposed in his declaration, of his own wrong, without any such cause alledged by the said defendant; (3) whereupon the issue in every such action shall be joined, to be tried by verdict of twelve men, and not otherwise, as is accustomed in other personal actions: (4) and upon the trial

trial of that issue, the whole matter to be given on both parties in evidence, according to the very truth of the same; (5) and after such issue tried for Treble damages for the defendant, or nonsuit of the plaintiff after appearance, the same defendant to recover treble damages, by reason of his wrongful vexation in that behalf, with his costs also in that part sustained, and that to be assessed by the same jury or writ to enquire of the damages, as the same shall require.

Stat. 20. "Provided always, That this act shall endure no longer than to the end of the next session of parliament. 3 *Car. 1, c. 4.* Continued until the end of the first session of the next parliament, and farther continued by 16 *Car. 1, c. 4.*

Stat. 7 Jac. 1, c. 3, which provides, how money given for binding poor children apprentices shall be bestowed; See title **Apprentices**, page 90.

Stat. 7 Jac. 1, c. 4, which provides "a remedy for those that run away, and leave their children to the charge of the parish;" See title **House of Correction**, page 620.

Stat. 7 Jac. 1, c. 5. [*A. D. 1609, intituled*] "An act for ease in pleading troublesome and contentious suits prosecuted against justices of the peace, mayors, constables, and certain other his majesty's officers, for the lawful execution of their office."

"For ease in pleading against many causeless and contentious suits which have been, and daily are commenced and prosecuted against justices of peace, mayors or bailiffs of cities and towns corporate, headboroughs, port-reves, constables, tithingmen, collectors of subsidies and fifteens, who for the execution of their office have been troubled and molested, and still are like to be troubled and molested by evil-disposed contentious persons, to their great charge and discouragement in doing of their offices: (2) be it therefore enacted by our sovereign lord the king, and by the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, That if an action, bill, plaint, or suit upon any case, trespass, battery, or false imprisonment shall be brought, after forty days next after the end of this session of parliament, in any of his majesty's courts at *Westminster*, or elsewhere, against any justice of peace, mayor or bailiff of city or town corporate, headborough, port-reve, constable, tithing-man, collector of subsidy or fifteens, for or concerning any matter, cause or thing, by them or any of them done, by virtue or reason of their, or any of their office or offices, that it shall be lawful to and for every such justice of peace, mayor, bailiff, constable, or other officer or officers before named, and all others which in their aid or assistance, or by their commandment shall do any thing touching or concerning his or their office or offices,

The plea of an officer, impleaded for the execution of his office. *Cro. Car. 175, 285, 467. Vaugh. 113. Noy 32.*

1 *Roll. 274,*
1 *Moor 845,*
1 *Mod. 184.*

The defend-
ant allowed
double costs
of suit.

3 Bullr. 77.

Continuance
of this act.

offices, to plead the general issue, that he or they are not guilty, (3) and to give such special matter in evidence to the jury which shall try the same, which special matter being pleaded, had been a good and sufficient matter in law to have discharged the said defendant or defendants of the trespass, or other matter laid to his or their charge: (4) and that if the verdict shall pass with the said defendant or defendants in any such action, or the plaintiff or plaintiffs therein become nonsuit, or suffer any discontinuance thereof, that in every such case the justices or justice, or such other judge before whom the said matter shall be tried, shall by force and virtue of this act allow unto the defendant or defendants his or their double costs, which he or they shall have sustained by reason of their wrongful vexation in defence of the said action or suit; (5) for which the said defendant or defendants shall have the like remedy as in other cases where costs by the laws of this realm are given to the defendants. (6) And this act to continue for seven years, and from thence to the end of the next session of parliament after the said seven years. *This statute is enlarged, and made perpetual, 21 Jac. 1, c. 12; but see 21 Jac. 1, c. 28, which only continues it to the end of the first session of the next parliament. But by sect. 2, of the last mentioned act, it is enacted, that so much of the said act 7 Jac. 1, c. 5, as by any new act made in this session of parliament [21 Jac. 1,] should be explained, altered, or repealed, should for so much thereof stand to be in force as by those other acts should be ordained. The consequence of which is, that the act 7 Jac. 1, c. 5, is perpetual by 21 Jac. 1, c. 12.*

STAT. 21 Jac. 1, c. 12, [A. D. 1623, intituled] "An act to enlarge and make perpetual the act made for ease in pleading, against troublesome and contentious suits prosecuted against justices of the peace, mayors, constables, and certain other his majesty's officers, for the lawful execution of their office, made in the seventh year of his majesty's most happy reign."

The stat. of
7 Jac. 1, c. 5,
enlarged and
made perpe-
tual.
4 Inst. 174.

"Whereas an act, intituled, *An act for ease in pleading, against troublesome and contentious suits prosecuted against justices of the peace, mayors, constables, and certain other his majesty's officers, for the lawful execution of their office, made in the seventh year of his majesty's most happy reign of England*, was made to continue but for seven years, and from thence to the end of the next parliament after the said seven years, which by experience hath since been found to be a good and profitable law:

Sect. 2. "Be it therefore enacted by the king's most excellent majesty, the lords spiritual and temporal, and the commons in this present parliament assembled, and by the authority of the same, That the said act shall from and after the end of this present session of parliament, be perpetual and have continuance for ever.

Churchwar-
dens and over-
seers of the
poor shall be

Sect. 3. "And be it further enacted by the authority aforesaid, That all churchwardens, and all persons called sworn-men, executing of the office of churchwardens, and all overseers of the poor, and all others which in

in their aid and assistance, or by their commandment, shall do any thing touching or concerning his or their office or offices, shall hereafter be enabled to receive, and have such benefit and help by virtue of the said act, to all intents, contrivings, and purposes, as if they had been specially named therein. comprehended within the purview of 7 Jac. 1, c. 5.

Seet. 4. " And whereas notwithstanding the said statute, the plaintiff is at liberty to lay his action which he shall bring against any justice of peace, or other officer, in any foreign country at his choice, which hath proved very inconvenient unto sundry of the officers and persons aforesaid, that have been impleaded by some contentious and troublesome persons in countries far remote from their place of habitations.

Seet. 5. " Be it therefore enacted by the authority aforesaid, That if any action, bill, plaint, or suit upon the case, trespass, battery, or false imprisonment, shall be brought after the end of this present session of parliament, against any justice of peace, mayor, or bailiff of city, or town corporate, headborough, portreve, constable, tithing-man, collector of subsidy or fifteens, churchwardens, and persons called sworn-men, executing the office of church-warden or overseer of the poor, and their deputies, or any of them, or any other which in their aid and assistance, or by their commandment shall do any thing touching or concerning his or their office or offices, for or concerning any matter, cause or thing by them or any of them done by virtue or reason of their or any of their office or offices, that the said action, bill, plaint, or suit shall be laid within the county where the trespass or fact shall be done and committed, and not elsewhere; (2) and that it shall be lawful to and for all and every person and persons aforesaid, to plead thereunto the general issue, that he or they are not guilty, and to give such special matter in evidence to the jury which shall try the same, as in or by the said former act is limited or declared: (3) and that if upon the trial of any such action, bill, plaint, or suit, the plaintiff or plaintiffs therein shall not prove to the jury which shall try the same, that the trespass, battery, imprisonment, or other fact or cause of his, her, or their such action, bill, plaint, or suit was, or were had, made, committed, or done within the county wherein such action, bill, plaint, or suit shall be laid, that then in every such case, the jury which shall try the same, shall find the defendant and defendants in every such action, bill, plaint or suit, not guilty, without having any regard or respect to any evidence given by the plaintiff or plaintiffs therein, touching the trespass, battery, imprisonment, or other cause for which the same action, bill, plaint, or suit, is or shall be brought: (4) and if the verdict shall pass with the defendant or defendants in any such action, bill, plaint or suit, or the plaintiff or plaintiffs therein become nonsuit, or suffer any discontinuance thereof, that in every such case, the defendant or defendants shall have such double costs, and all other advantages and remedies, as in and by the said former act is limited, directed, or provided. An action brought against an officer, shall be laid in the county where the fact was committed. 1 Inst. 283. Vaughan 113, 115, 117. The defendant shall have double costs.

STAT. 3 Car. 1, c. 4, *sect.* 22. See this act under title *Apprentices*, page 94.

STAT. 13 & 14 Car. 2, c. 12, [*A. D.* 1662, *intituled*] “An act for the better relief of the poor of this kingdom.”

The occasion
of increase of
poor.

“Whereas the necessity, number, and continual increase of the poor, not only within the cities of *London* and *Westminster*, with the liberties of each of them, but also through the whole kingdom of *England* and dominion of *Wales*, is very great and exceeding burthenfome, being occasioned by reason of some defects in the law concerning the settling of the poor, and for want of a due provision of the regulations of relief and employment in such parishes or places where they are legally settled, which doth enforce many to turn incorrigible rogues, and others to perish for want, together with the neglect of the faithful execution of such laws and statutes as have formerly been made for the apprehending of rogues and vagabonds, and for the good of the poor: (2) for remedy whereof, and for the preventing the perishing of any the poor, whether young or old, for want of such supplies as are necessary, may it please your most excellent majesty, that it may be enacted; (3) and be it enacted by the king’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and the commons in this present parliament assembled, and by the authority of the same, That whereas by reason of some defects in the law, poor people are not restrained from going from one parish to another, and therefore do endeavour to settle themselves in those parishes where there is the best stock, the largest commons or wastes to build cottages, and the most woods for them to burn and destroy, and when they have consumed it, then to another parish, and at last become rogues and vagabonds, to the great discouragement of parishes to provide stocks, where it is liable to be devoured by strangers; (4) be it therefore enacted by the authority

Poor people
going from
one parish to
another,

how to be
settled, com-
ing to any te-
ne ment under
ten pounds
yearly value.

Altered and
explained by
1 Ja. 2, c. 17,
1. 3.
3 & 4 W. &
M. c. 11, f. 3.

aforesaid, That it shall and may be lawful, upon complaint made by the churchwardens or overseers of the poor of any parish, to any justice of peace, within forty days after any such person or persons coming so to settle, as aforesaid, in any tenement under the yearly value of ten pounds, for any two justices of the peace, whereof one to be of the quorum, of the division where any person or persons that are likely to be chargeable to the parish shall come to inhabit, by their warrant to remove and convey such person or persons to such parish where he or they were last legally settled, either as a native, householder, sojourner, apprentice, or servant, for the space of forty days at the least, unless he or they give sufficient security for the discharge of the said parish, to be allowed by the said justices.

Persons griev-
ed may appeal
to the quarter
sessions.

Set. 2. “Provided always, That all such persons who think themselves aggrieved by any such judgment of the said two justices, may appeal to the justices of the peace of the said county at their next quarter-sessions, who

who are hereby required to do them justice according to the merits of their cause.

Sett. 3. " Provided also, That (this act notwithstanding) it shall and may be lawful for any person or persons to go into any county, parish or place to work in time of harvest, or at any time to work at any other work, so that he or they carry with him or them a certificate from the minister of the parish, and one of the churchwardens, and one of the overseers for the poor for the said year, that he or they have a dwelling-house or place in which he or they inhabit, and hath left wife and children, or some of them there, (or otherwise as the condition of the persons shall require) and is declared an inhabitant or inhabitants there : (2) and in such case, if the person or persons shall not return to the place aforesaid, when his or their work is finished, or shall fall sick or impotent whilst he or they are in the said work, it shall not be accounted a settlement in the cases aforesaid, but that it shall and may be lawful for two justices of the peace to convey the said person or persons to the place of his or their habitation, as aforesaid, under the pains and penalties in this act prescribed : (3) and if such person or persons shall refuse to go, or shall not remain in such parish where they ought to be settled, as aforesaid, but shall return of his own accord to the parish from whence he was removed, it shall and may be lawful for any justice of the peace of the city, county, or town-corporate where the said offence shall be committed, to send such person or persons offending to the house of correction, there to be punished as a vagabond, or to a public workhouse in this present act hereafter mentioned, there to be employed in work or labour : (4) and if the church wardens and overseers of the poor of the parish to which he or they shall be removed, refuse to receive such person or persons, and to provide work for them, as other inhabitants of the parish, any justice of peace of that division may and shall thereupon bind any such officer or officers in whom there shall be default, to the assizes or sessions, there to be indicted for his or their contempt in that behalf.

Sett. 4. " And for the further redress of the mischiefs intended to be hereby remedied, be it enacted by the authority aforesaid, That from thenceforth there be, and shall be, one or more corporation or corporations, work-house or workhouses within the cities of *London* and *Westminster*, and within the boroughs, towns and places of the county of *Middlesex* and *Surry*, situate, lying and being within the parishes mentioned in the weekly bills of mortality, consisting of a president, a deputy to the president, and a treasurer ; and that the lord mayor of the city of *London* for the time being be president of the corporation or corporations, work-house or work-houses within the said city, and the assistants to be the aldermen of the said city of *London* for the time being, and fifty-two other citizens to be chosen by the common council of the said city : (2) and that the said president and assistants, or the major part of them, shall and may elect a deputy-president and treasurer, and all other necessary officers hereby constituted and authorized to execute the powers and offices by this

Persons going to work in harvest.

Corporations or work-houses in the cities of London and Westminster, Middlesex, Surry.

act appointed: (3) and that upon the vacancy by death or otherwise of any assistant, the power to elect in their rooms be in the said common council, and the election of the deputy-president, or treasurer, and all other officers, in the said president and major part of the assistants as aforesaid: (4) And that a president, a deputy-president, a treasurer and assistants be nominated and appointed by the lord chancellor, or lord keeper of the great seal of *England* for the time being, out of the most fit persons inhabiting in the city of *Westminster*, or the liberties thereof, for the corporation or corporations, workhouse or workhouses within the same.

President, deputy-president, treasurer and assistants for *Middlesex* and *Surrey*, how to be elected.

Stat. 5. " And for the said places within the weekly bills of mortality in the said counties of *Middlesex* and *Surrey* respectively, there shall be elected and chosen by the major part of the justices of the peace for the said counties in their respective quarter sessions assembled, out of the most able and honest inhabitants and freeholders of every of the said counties of *Middlesex* and *Surrey* respectively, a president, a deputy-president, a treasurer and assistants for the corporation or corporations, workhouse or workhouses of the places aforesaid in *Middlesex* and *Surrey*; and that upon the vacancy by death, or otherwise, of any of the presidents, deputy-presidents, treasurers or assistants in the city of *Westminster*, and places aforesaid in *Middlesex* and *Surrey*, the power to elect others in their rooms be in the major part of the respective justices of peace, who in their general quarter sessions from time to time shall accordingly supply such vacant places; (2) and that at every quarter-sessions they shall require and take an account in writing of all the receipts, charges and disbursements of the officers and treasurer of such corporation or corporations, workhouse or workhouses, how and how many poor people have been employed and set to work in the year last past, and what stock there was, and is remaining; (3) which president, deputy-president, and treasurer for the time being respectively, shall for ever hereafter in name and fact, be bodies politic and corporate in law, to all intents and purposes, and shall have a perpetual succession, and may sue or plead, or be sued and impleaded by the name of the president and governors for the poor of the respective places aforesaid, in all courts and places of judicature within this kingdom, and the dominion of *Wales*, and the town of *Berwick upon Tweed*; (4) and by that name every of the said corporations shall and may without licence in mortmain, purchase or receive any lands, tenements or hereditaments, not exceeding the yearly value of three thousand pounds *per annum*, of the gift, alienation or devise of any person or persons, who are hereby without further licence enabled to give the same, and any goods, chattels, or sums of money whatsoever, to the use, intent and purposes hereafter limited and appointed; (5) and that each respective corporation, or any seven of them, shall have hereby power and authority from time to time to meet and keep courts for the ends and purposes in this act expressed, at such time and place as shall be appointed by the said president, his deputy, or the treasurer, who are hereby required upon the desire of any four of the said corporation, at any time to cause a court to be warned accordingly, and shall have hereby authority from time to time to make and appoint a common seal for the use of the said corporation.

City of *Westminster*.

Sec. 6. " And it is further enacted by the authority aforesaid, That it shall and may be lawful to and for the said president and governors of the said corporations for the time being, or any two of them, or to, or for any person authorized and appointed by them or any two of them, from time to time to apprehend, or cause to be apprehended, any rogues, vagrants, sturdy beggars, or idle and disorderly persons within the said cities and liberties, places, divisions and precincts, and to cause them to be kept and set to work in the several and respective corporation or workhouses; (2) and it shall and may be lawful for the major part of the justices of peace in their quarter-sessions, to signify unto his majesty's privy council, the names of such rogues, vagabonds, idle and disorderly persons and sturdy beggars as they shall think fit to be transported to the English plantations; (3) and upon the approbation of his majesty's privy council to the said justices of peace signified, which person shall be transported, it shall and may be lawful for any two or more of the justices of the peace, them to transport, or cause to be transported from time to time, during the space of three years next ensuing the end of this present sessions of parliament, to any of the English plantations beyond the seas, there to be disposed in the usual way of servants, for a term not exceeding seven years.

Sec. 7. " And be it further enacted by the authority aforesaid, That if the president and governors of any of the said corporations, shall certify under their common seal, their want and defect either of a present stock for the foundation of the work, or for supply thereof for the future, and what sum or sums of money they shall think fit for the same, to the common council of the said city of London, and the burgeses and justices of peace in their quarter-sessions of the said city of Westminster, and the liberties thereof, or the justices of the respective counties of Middlesex and Surrey assembled in either quarter-sessions, That thereupon the common council of the said city of London, the burgeses of the said city of Westminster, and the justices of the peace of the said cities and counties in their quarter-sessions assembled, are hereby required from time to time to set down and ascertain such competent sum and sums of money for the purposes aforesaid, not exceeding one year's rate from time to time usually set upon any person, for or towards the relief of the poor, and the same to proportion out upon the several wards, precincts, counties, divisions, hundreds, and parishes, as they shall think fit: (2) And thereupon the aldermen, deputies, and common councilmen of every ward in the city of London, and burgeses and justices of the peace of the city of Westminster, and the Liberties thereof, and justices of the peace of the said counties of Middlesex and Surrey, shall have power and authority, and are hereby required equally and indifferently, according to the proportions appointed, as aforesaid, for the several wards, precincts, cities and parishes, as aforesaid, to tax and rate the several inhabitants within the said respective wards, precincts, and parishes, as well within liberties as without; (3) with which tax, if any person or persons find him or themselves aggrieved, supposing the same to be unequal, he or they shall and may make their complaint known to the justices.

justices of the peace at the next open sessions, who shall take such final order therein, as in like cases is already by the law provided.

Sett. 8. " And it is further enacted by the authority aforesaid, That it shall and may be lawful to and for any alderman of the city of *London*, or his deputy, or the burgesses and justices of peace of the city of *Westminster*, and the liberties thereof, or any two or more of them, or any two justices of peace of the respective counties of *Middlesex* and *Surrey*, by their warrant under their hands and seals, to authorize the churchwardens or overseers for the poor within the places and parishes aforesaid, to demand, gather and receive of every person and persons, such sum and sums of money as shall be assessed upon them by virtue of the taxations and contributions aforesaid; (2) and for default of payment within ten days after demand thereof made, or notice in writing left at the dwelling-house or lodging of every person so assessed, to levy the same by distress and sale of goods of every such person, and after satisfaction made, to restore the surplussage to the party so distrained.

Stocks formerly in London for the relief of the poor how to be paid.

Sett. 9. " And be it enacted by the authority aforesaid, That all stocks raised for the relief and employment of the poor in the city of *London*, and liberties thereof, which was in the hands of a corporation heretofore appointed in the said city for that service, or in the hands of any other person or persons whatsoever, before the nine and twentieth day of *September*, which was in the year of our Lord one thousand six hundred and sixty, commonly called the feast of *St. Michael*, the archangel, or at any time since, together with all the arrears of money formerly allotted for that service, or legacies given to the same end, shall be payable to the treasurer of the corporation or corporations, workhouse or workhouses to be established by this present act, who are hereby authorized and empowered by themselves, or their officers thereunto by them deputed, to collect, gather, receive and recover the said money and legacies, which shall be due and in arrear, as aforesaid, with which said arrears, and every part and parcel thereof, the corporation or corporations aforesaid by this act made, constituted and established, is, and shall be hereby invested, and interested for the execution of the service hereby enjoined them: (2) And all those that have had, or now have any of the said stock in their or any of their hands, shall be accountable to the said treasurer, or to those that shall be appointed by the said corporation or corporations, or any seven or more of them, to take the said account.

Sett. 10. " Provided always, and be it enacted by the authority aforesaid, That there shall be a full allowance of all just and necessary expences which have been laid out by the said former corporation for the relief of the said poor, and the carrying on of the said service since the time before expressed.

Power to make orders and by-laws.

Sett. 11. " And it is further enacted by the authority aforesaid, That the respective president and governors, or any seven of them, shall have power from time to time to make and constitute orders and by laws for the better relieving, regulating, and setting the poor to work, and the apprehending and punishing of rogues, vagabonds and beggars within the cities, liberties,

liberties, and places aforesaid, that have not wherewith to maintain themselves, and for other the matters aforesaid.

Sec. 12. " Provided the said orders and by-laws shall from time to time be presented to the justices of peace in their quarter-sessions assembled, to be allowed by the major part of them, and confirmed by order of the said court.

Sec. 13. " And it is further enacted by the authority aforesaid, That the president and governors of any the said corporation or corporations, workhouse or workhouses, or any fourteen or more of them being assembled together, shall have hereby power to chuse and entertain all such officers, and other as shall be needful to be employed in and about the premises, and them, or any of them, from time to time to remove as they shall see cause, and upon the death or removal of them, or any of them, to chuse others in their places for the carrying on of the work, and to make and give such reasonable allowances unto them, or any of them, out of the stock and revenue belonging to the said corporation or workhouse, as they shall think fit.

Sec. 14. " And it is further enacted by the authority aforesaid, That all sheriffs, bailiffs, constables, and all other officers and ministers of justice, shall be aiding and assisting to the said corporation or corporations, and to all such officers as shall be employed by them, or any of them, in the execution or performance of the said service.

Sec. 15. " And whereas the laws and statutes for the apprehending of rogues and vagabonds, have not been duly executed, sometimes for want of officers, by reason lords of manors do not keep court-leets every year for the making of them; (2) Be it therefore enacted by the authority aforesaid, That in case any constable, headborough, or tithingman shall die or go out of the parish, any two justices of the peace may make and swear a new constable, headborough, or tithingman, until the said lord shall hold a court, or until next quarter-sessions, who shall approve of the said officers so made and sworn, as aforesaid, or appoint others as they shall think fit: (3) And if any officer shall continue above a year in his or their office, that then in such case, the justices of peace in their quarter-sessions may discharge such officers, and may put another fit person in his or their place until the lord of the said manor shall hold a court as aforesaid.

Sec. 16. " And whereas for want of some encouragement to such person or persons as shall apprehend rogues, vagabonds, and sturdy beggars, the statutes made in the nine and thirtieth year of queen *Elizabeth*, and first year of king *James*, in which statutes the constable, headborough or tithingman of every parish that shall not apprehend such rogues, vagabonds, and sturdy beggars which shall pass through, or be found in their said parish unapprehended, such constable, headborough, or tithingman, shall forfeit as in the said statutes is expressed, are not duly executed; (2) Be it therefore enacted by the authority aforesaid, That it shall and may be lawful to and for any

Power to chuse and entertain officers.

All sheriffs, &c. to be assisting to the said corporation and their officers.

Constables, how made in default of holding court-leets.

Apprehending rogues and vagabonds 39 Eliz. c. 4. 1 Jac. 1, c. 7.

How reward-
ed.

any justice of the peace, to whom any rogue, vagabond, or sturdy beggars so apprehended shall be brought, to reward any person or persons that shall apprehend any rogue, vagabond or sturdy beggar, by granting unto such person or persons an order or warrant under his hand and seal to the constable, headborough or tithingman of such parish, where such rogue, vagabond, or sturdy beggar passed through unapprehended, requiring him to pay such person or persons the sum of two shillings for every rogue, vagabond, or sturdy beggar which shall be so apprehended: (3, And if such constable, headborough, or tithingman, refuse or neglect to pay the two shillings, as aforesaid, that then the said justices of peace, or any other justice or justices of peace, shall proceed against any such constable, headborough or tithingman, according to the said statutes; and to compel him to pay such sum of money as he hath forfeited by the statute of the first year of king *James* aforesaid, and to allow out of the said forfeiture the said two shillings, and such reasonable means and allowances for loss of time as they shall think fit.

Rogues and
vagabonds
apprehended
at the confines
of any county.
How to be
dealt withal.

Stat. 17. " And if any person or persons shall apprehend any rogue, vagabond, or sturdy beggar, at the confines of any county, which passed through any parish of another county unapprehended, it shall be lawful for such person or persons to go to some justice of peace of that county through which such rogue, vagabond or sturdy beggar passed unapprehended, who is hereby required (upon a certificate under the hand of some justice of peace of the county where such rogue, vagabond, or sturdy beggar was so apprehended) to grant his order or warrant under his hand and seal, requiring the said constable, headborough or tithingman to pay unto such person or persons, as aforesaid, the sum of two shillings, which if he shall refuse or neglect to do, then such justice is hereby required to proceed against such constable, headborough or tithingman, and to cause him to pay ten shillings, or so much thereof for his expences and loss of time, as the said justice of peace shall think fit, to such person or persons, which he hath forfeited by the statute aforesaid, made in the nine and thirtieth year of the queen.

Carthw 293.
Power to
make rates.

43 Eliz. c. 2.

Stat. 18. " And whereas constables, headboroughs or tithingmen, are or may be at great charge in relieving, conveying with passes, and in carrying rogues, vagabonds, and sturdy beggars to houses of correction, or the workhouses herein-mentioned, and as yet have no power by law to make rates to reimburse themselves: (2) Be it therefore enacted by the authority aforesaid, That all constables, headboroughs and tithingmen so out of purse, as aforesaid, together with the churchwardens and overseers of the poor, and other inhabitants of the said parish, shall hereby have power and authority to make an indifferent rate, and to tax all the occupiers of lands, and inhabitants, and all other persons chargeable by the statute of the three and fortieth of *Elizabeth*, concerning the office and duty of overseers for the poor within the said parish; (3) which rate being confirmed under the hands and seals of any two justices of peace as aforesaid, the said constable, headborough or tithingman, shall have power by warrant under the hands and seals of two justices of peace, to levy by distress and sale of the

the goods of any person or persons refusing to pay the same, rendering the overplus to the owner, if any shall be.

Sec. 20. " And if any person or persons shall be sued for any matter or thing which he shall do in execution of this act, he may plead the general issue, and give the special matter in evidence; and if the verdict shall pass for the defendant, or if the plaintiff be nonsuited or discontinue his suit, the defendant shall recover treble damages. Persons sued for matters in this act, may plead the general issue.

Sec. 21. " Whereas the inhabitants of the counties of *Lancashire*, *Cheshire*, *Derbyshire*, *Torkshire*, *Northumberland*, the bishopric of *Durham*, *Cumberland* and *Westmerland*, and many other counties in *England* and *Wales*, by reason of the largeness of the parishes within the same, have not, or cannot reap the benefit of the act of parliament made in the three and fortieth year of the reign of the late queen *Elizabeth*, for relief of the poor; (2) therefore be it enacted by the authority aforesaid, that all and every the poor, needy, impotent, and lame person and persons within every township or village within the several counties aforesaid, shall from and after the passing of this act, be maintained, kept, provided for, and set on work within the several and respective township and village wherein he, she or they shall inhabit, or wherein he, she or they was or were last lawfully settled, according to the intent and meaning of this act; (3) and that there shall be yearly chosen and appointed, according to the rules and directions in the said act of the three and fortieth year of queen *Elizabeth* mentioned, two or more overseers of the poor within every of the said townships or villages, who shall from time to time do, perform and execute all and every the acts, powers and authorities for the necessary relief of the poor within the said township or village, and shall lose, forfeit and suffer all such pains and penalties for non-performance thereof, as is limited, mentioned and appointed in and by the said in part recited act. Lancashire, Cheshire, Derbyshire, Yorkshire, Northumberland, Durham, Cumberland, Westmerland, 43 Eliz. c. 2, 2 Lev. 142, 143, 1 Salk. 123.

Sec. 22. " And be it further enacted by the authority aforesaid, That the justices of peace within the said counties, shall have and enjoy such and the like powers and authorities to raise and levy monies, and to do and execute all and every such other act and thing whatsoever, within every township, or village within the said county where they are justices, as is given, limited and appointed unto, and for them to do and execute within any parish or parishes, in and by the said act made in the said three and fortieth year of the said late queen *Elizabeth*, under such and the like pains and penalties for the non-performance of their duties, to be levied and disposed of, as is nominated and expressed in the said act. 43 Eliz. c. 2.

Sec. 23. " Provided always, and be it enacted by the authority aforesaid, That it shall and may be lawful for the justices of peace in any of the counties of *England* and *Wales*, in their quarter-sessions assembled, or the major part of them, to transport or cause to be transported such rogues, vagabonds and sturdy beggars, as shall be duly convicted and adjudged to be incorrigible, to any of the *English* plantations beyond the seas. Power of the justices to transport rogues and vagabonds.

Proviso for
the dean and
chapter of
Westminster.

Secl. 24. " Provided also, That neither this act, nor any thing therein contained, shall extend to be, or be construed, expounded or taken to the prejudice or infringement of any of the franchises, rights, liberties or privileges heretofore granted by the kings and queens of this realm, his majesty's royal predecessors, to the dean and chapter of the collegiate church of *St Peter in Westminster*.

The continu-
ance of divers
parts of this
act.

Secl. 25. " Provided always, That this act, as to all the matters therein contained, (excepting what relates unto the corporations mentioned and constituted thereby) shall extend, and be in force until the nine and twentieth day of *May*, one thousand six hundred sixty-five, and the end of the first session of the next parliament then next ensuing, and no longer." *Made perpetual by 12 Annæ, stat. 1, c. 18, sect. 1.*

STAT. 1 Jac. 2, c. 17, [A. D. 1685, intituled] " An act for reviving and continuance of several acts of parliament therein mentioned."

" Whereas many good and wholesome laws were made in the reign of your majesty's royal brother king *Charles* the Second, of blessed memory, as probationary laws, which by experience have been found very useful and beneficial both for the service of the crown, and good of the subjects of this your majesty's realm; which said acts being made temporary, are most of them expired, and others near expiring; your commons in this present parliament assembled, taking the same into their serious consideration, do most humbly beseech your majesty, That it may be enacted:

13 & 14 Car.
2, c. 12, re-
vived for se-
ven years, ex-
cept as to the
corporation.

Secl. 2. " And be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That one act of parliament made in the thirteenth and fourteenth years of his said late majesty's reign, intituled, *An act for the better relief of the poor of this kingdom* (except what relates unto the corporation therein mentioned and constituted thereby) shall be in force from the first day of this present session of parliament, and so to continue for the space of seven years, and from thence to the end of the next session of parliament.

Settlement to
be accounted
from notice in
writing.

Secl. 3. " And forasmuch as such poor persons at their first coming to a parish do commonly conceal themselves, be it therefore hereby provided and enacted by the authority aforesaid, That the forty days continuance of such person in a parish, intended by the said act to make a settlement, shall be accounted from the time of his or her delivery of notice in writing (which they are hereby required to do) of the house of his or her abode, and the number of his or her family, if he or she have any, to one of the church-wardens or overseers of the poor of the said parish, to which they shall so remove."

STAT. 3 Will. & Ma. c. 11, [A. D. 1691, intituled] " An act for the better explanation and supplying the defects of the former laws, for the settlement of the poor."

" Whereas

“ Whereas one act of parliament made in the thirteenth and fourteenth years of his late majesty king *Charles* the Second, intituled, *An act for the better relief of the poor of this kingdom* (except what relates to the corporation therein mentioned and constituted thereby) was revived and continued with some alterations, by one other act made in the first year of the late king *James* the Second, and have been found by experience to be good and wholesome laws, but may shortly expire :

Secl. 2. “ Be it therefore enacted by the king’s and queen’s most excellent majesties, by and with the advice and consent of the lord’s spiritual and temporal, and commons, in this present parliament assembled, and by authority of the same, That the said acts, as to what relates to the settlements of the poor, shall be in force from the first day of *March*, one thousand six hundred ninety-one.

Secl. 3. “ But forasmuch as the said acts are somewhat defective and doubtful; for supplying and explaining the same, be it further provided and enacted by the authority aforesaid, That the forty days continuance of such person in a parish or town, intended by the said acts to make a settlement, shall be accounted from the publication of a notice in writing, which he or she shall deliver, of the house of his or her abode, and the number of his or her family, if he or she have any, to the churchwarden or overseer of the poor, which said notice in writing the said churchwarden or overseer of the poor, is or are hereby required to read, or cause to be read publicly, immediately after divine service, in the church or chapel of the said parish or town, on the next Lord’s day, when there shall be divine service in the same; and the said churchwarden or overseer of the poor is or are hereby required to register, or cause to be registered, the said notice in writing in the book kept for the poors accounts.

Secl. 4. “ Provided always, and be it enacted, That no soldier, seaman, shipwright, or other artificer or workman employed in their majesties service, shall have any settlement in any parish, port town, or other town, by delivery and publication of a notice in writing as aforesaid, unless the same be after the dismissal of such person out of their majesties service.

Secl. 5. “ And be it further enacted, That if any churchwarden or overseer of the poor shall refuse or neglect to read, or cause to be read, such notice in writing as aforesaid, in such manner, place, and time as aforesaid, he or they for every such offence (upon proof thereof by two credible witnesses upon oath, before any justice of the peace of the same county, riding, or division, city or town corporate, where complaint thereof shall be made) shall forfeit the sum of forty shillings to the use of the party grieved, to be levied by distress and sale of the offender or offenders goods, by warrant under the hand and seal of any justice of the peace within the said jurisdictions respectively, to the constable of the parish, or town, where such offender or offenders dwell, the overplus, if any be, to be returned to the owner or owners, and for want of such sufficient distress, the said justice shall commit him or them to the common gaol of the said county, city, or town-corporate, there to remain without bail or mainprize for the space of one month; and if any church-

The note of settlement must be read in the church, and registered in the poors book.

No soldier, &c. to have settlement before dismissal.

Penalty upon churchwarden refusing to read or register.

warden or overseer of the poor shall refuse or neglect to register, or cause to be registred such notice in writing as aforesaid, he or they so offending; upon the like conviction, shall forfeit the sum of forty shillings to the use of the poor of the parish or town where such offender or offenders dwell, to be levied as aforesaid, the overplus if any be, to be returned to the owner or owners; and for want of such sufficient distress, then the said justice shall commit such offender or offenders as aforesaid, for the time aforesaid.

Serving as officer, or paying parish duties, a settlement. *Secl. 6.* " Provided always, and be it enacted, That if any person; who shall come to inhabit in any town or parish, shall for himself and on his own account execute any public annual office or charge in the said town or parish, during one whole year, or shall be charged with and pay his share towards the public taxes or levies of the said town or parish, then he shall be adjudged and deemed to have a legal settlement in the same, though no such notice in writing be delivered and published, as is hereby before required.

Service for a year, of person without wife or child, a settlement. *Secl. 7.* " And it is hereby further enacted, That if any unmarried person, not having child or children, shall be lawfully hired into any parish or town for one year, such service shall be adjudged and deemed a good settlement therein, though no such notice in writing be delivered and published, as is herein before required.

Apprenticeship a settlement. *Secl. 8.* " And it is hereby further enacted, That if any person shall be bound an apprentice by indenture, and inhabit in any town or parish, such binding and inhabitation shall be adjudged a good settlement, though no such notice in writing be delivered and published as aforesaid.

Appeal from justice of peace to quarter-sessions, whose order shall be final. *Secl. 9.* " Provided always, and be it hereby enacted, That if any person or persons shall find him, her, or themselves aggrieved by any determination, which any justice or justices of the peace shall make in any of the cases aforesaid, the said person or persons shall have liberty to appeal to the next general quarter-sessions of the peace, to be held for the said county, riding, or division, city, or town-corporate, who upon full hearing of the said appeal shall have full power finally to determine the same.

Church-warden must receive a person removed by warrant of two justices of peace, upon 5 l. penalty. *Secl. 10.* " And be it further enacted, That if any person be removed by virtue of this act from one county, riding, city, town corporate, or liberty to another, by warrant under the hands and seals of two justices of the peace, the church-wardens or overseers of the poor of the said parish or town, to which the said person shall be so removed, are hereby required to receive the said person, and if he or they shall refuse so to do, he or they so refusing or neglecting (upon proof thereof by two credible witnesses upon oath before any justice of the peace of the county, riding, city or town-corporate, to which the said person shall be so removed) shall forfeit for each offence the sum of five pounds, to the use of the poor of the parish or town from which the said person was removed, to be levied by distress and sale of the offender or offenders goods, by warrant under the hand and seal of any justice of the peace of the county, riding, city, or town corporate, to which such person was removed, to the constable

of

of the parish or town where such offender or offenders dwell; which warrant the said justice is hereby impowered and required to make; the overplus, if any be, to be returned to the owner or owners; and for want of such sufficient distress, then the said justice shall commit the said offender or offenders to the common gaol of the said county, riding, city, or town corporate, or liberty, there to remain without bail or mainprize, for the space of forty days. Provided always, and be it hereby enacted, That all such persons who think themselves aggrieved with any such judgment of the said two justices may appeal to the next general quarter sessions of the peace to be held for the county, riding, city, town corporate, or liberty, from which the said person was so removed.

Persons aggrieved by such removal may appeal to sessions.

SECT. 11. "And whereas many inconveniencies do daily arise in cities, towns corporate, and parishes, where the inhabitants are very numerous, by reason of the unlimited power of the church-wardens and overseers of the poor, who do frequently upon frivolous pretences (but chiefly for their own private ends) give relief to what persons and number they think fit, and such persons, being entred into the collection bill, do become after that a great charge to the parish, notwithstanding the occasion or pretence of their receiving collection oftentimes ceases, by which means the rates for the poor are daily increased, contrary to the true intent of a statute made in the forty-third year of the reign of her majesty queen *Elizabeth*, intituled, *An act for the relief of the poor*: for remedying of which, and preventing the like abuses for the future, be it further enacted, That from and after the first day of *March*, there shall be provided and kept in every parish (at the charge of the same parish) a book or books, wherein the names of all such persons who do or may receive collection shall be registered, with the day and year when they were first admitted to have relief, and the occasion which brought them under that necessity: and that yearly in *Easter* week (or as often as it shall be thought convenient) the parishioners of every parish shall meet in their vestry or other usual place of meeting in the same parish, before whom the said book shall be produced, and all persons receiving collection to be called over, and the reasons of their taking relief examined, and a new list made and entred, of such persons as they shall think fit and allow to receive collection, and that no other person be allowed to have or receive collection at the charge of the said parish, but by authority under the hand of one justice of peace residing within such parish, or (if none be there dwelling) in the parts near or next adjoining, or by order of the justices in their respective quarter sessions, except in cases of pestilential diseases, plague, or small pox, for and in respect of such families only as are or shall be therewith infected.

43 El. c. 2: A register to be kept of the admittances of the poor.

Parishioners yearly in Easter week shall make a list of their poor.

None but those in the list to receive alms, except by order of justice of peace, &c. Farther provisions relating hereto, 9 Geo. 1, c. 7, s. 1.

SECT. 12. "And whereas many church-wardens and overseers of the poor, and other persons entrusted to receive collections for the poor, and other publick monies relating to the churches and parishes whereunto they do belong, do often mispend the said monies, and take the same to their own use, to the great prejudice of such parishes, and the poor, and other inhabitants thereof; and because that many times the judges, when actions

Parishioners, except alms-men, may be evidence against church-wardens, &c. of their mispending the poor's money.

are brought against such church-wardens and overseers, to recover the monies so mispent, taken, or misapplied by the persons aforesaid, refuse to admit the parishioners to be witnesses in such cases, who are the only persons that can make proof thereof: wherefore to prevent all such evil and deceitful practices of church-wardens, and overseers, and other persons, be it enacted and declared, That in all actions to be brought in their majesties courts of record at *Westminster*, or at the assizes, for the recovery of any sum or sums of money so mispent, or taken by church-wardens or overseers of the poor, the evidence of the parishioners, or any of them, other than of such as receive alms or any pension or gift out of such collections or public monies of such parish or parishes respectively, whereof the defendant or defendants is or are inhabitant or inhabitants, shall be taken and admitted in all such cases in the courts aforesaid; any custom, rule, order, or usage to the contrary notwithstanding.

STAT. 8 & 9 Will. 3, c. 30, [A. D. 1697, intituled] "An act for supplying some defects in the laws, for the relief of the poor of this kingdom."

Persons coming to inhabit in any parish or place, and bringing with them a certificate under the church-wardens hands &c. owning them to be inhabitants of such other parish, &c. the said other parish to provide for them whenever they ask relief of the parish to which such

"Forasmuch as many poor persons chargeable to the parish, township, or place, where they live, merely for want of work, would, in any other place where sufficient employment is to be had, maintain themselves and families, without being burthensome to any parish, township, or place, but not being able to give such security as will or may be expected and required upon their coming to settle themselves in any other place, and the certificates that have been usually given in such cases having been oftentimes construed into a notice in hand-writing, they are, for the most part, confined to live in their own parishes, townships, or places, and not permitted to inhabit elsewhere, though their labour is wanted in many other places, where the increase of manufactures would employ more hands: be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and the commons, in this present parliament assembled, That if any person or persons whatsoever, that from and after the first day of *May*, which shall be in the year of our Lord one thousand six hundred ninety seven, shall come into any parish or other place, there to inhabit and reside, shall at the same time procure, bring, and deliver to the church-wardens or overseers of the poor of the parish, or place, where any such person shall come to inhabit, or to any or either of them, a certificate under the hands and seals of the church-wardens and overseers of the poor of any other parish, township, or place, or the major part of them, or under the hands and seals of the overseers of the poor of any other place where there are no church-wardens, to be attested respectively by two or more credible witnesses, thereby owning and acknowledging the person or persons mentioned in the said certificate to be an inhabitant or inhabitants legally settled in that parish, township, or place, every such certificate, having been allowed of, and subscribed

scribed by two or more of the justices of the peace of the county, city, liberty, borough, or town corporate, wherein the parish or place, from whence any such certificate shall come, doth lie, shall oblige the said parish or place to receive and provide for the person mentioned in the said certificate, together with his or her family, as inhabitants of that parish, whenever he, she, or they, shall happen to become chargeable to, or be forced to ask relief of the parish, township, or place, to which such certificate was given; and then, and not before, it shall and may be lawful for any such person, and his or her children, though born in that parish, not having otherwise acquired a legal settlement there, to be removed, conveyed, and settled, in the parish or place from whence such certificate was brought.

SECT. 2. "And to the end that the money raised only for the relief of such as are as well impotent as poor, may not be misapplied and consumed by the idle, sturdy, and disorderly beggars: be it further enacted by the authority aforesaid, That every such person as, from and after the first day of *September*, one thousand six hundred ninety seven, shall be upon the collection, and receive relief of any parish or place, and the wife and children of any such person cohabiting in the same house (such child only excepted, as shall be by the church-wardens and overseers of the poor permitted to live at home, in order to have the care of and attend an impotent and helpless parent) shall, upon the shoulder of the right sleeve of the uppermost garment of every such person, in an open and visible manner, wear such badge or mark as is herein after mentioned and expressed, that is to say, a large *Roman P*, together with the first letter of the name of the parish or place whereof such poor person is an inhabitant, cut either in red or blue cloth, as by the church-wardens and overseers of the poor it shall be directed and appointed: and if any such poor person shall at any time neglect or refuse to wear such badge or mark, as aforesaid, and in manner as aforesaid, it shall and may be lawful for any justice of the peace of the county, city, liberty, or town corporate, where any such offence shall be committed, upon complaint to him for that purpose to be made, to punish every such offender for every such offence, either by ordering of his or her relief or usual allowance on the collection to be abridged, suspended, or withdrawn, or otherwise by committing of any such offender to the house of correction, there to be whipt and kept to hard labour, for any number of days not exceeding one and twenty, as to the said justice in his discretion it shall seem most meet; and if any such church-warden, or overseer of the poor, from and after the said first day of *September*, shall relieve any such poor person, not having and wearing such badge or mark, as aforesaid, being thereof convicted, upon the oath of one or more credible witnesses or witnesses, before any justice of the peace of the county, city, liberty, or town corporate, where any such offence shall be committed, shall forfeit for every such offence the sum of twenty shillings, to be levied by distress and sale of the goods of every such offender, by warrant under the hand and seal of any such justice, one moiety thereof to be

certificate was given.

Explained by 9 & 10 W. 3. c. 11, and 12 Ann. stat. 1, c. 18, f. 2.

Such witness to swear to the execution of certificates.

&c. 3 Geo. 2, c. 29, f. 8.

And shall not be removed before.

Persons receiving alms to wear a badge on the shoulder of the right sleeve.

Penalty on refusing to wear the badge.

Penalty on church-warden, &c. relieving poor persons not wearing such badge.

to the use of the informer, and the other to the poor of the parish where the offence shall be committed.

Justices, on appeal to them concerning the settlement of any poor person, to award costs.

Sect. 3. "And for the more effectual preventing of vexatious removals and frivolous appeals, be it further enacted by the authority aforesaid, That the justices of the peace of any county or riding, in their general or quarter-sessions of the peace, upon any appeal before them there to be had, for and concerning the settlement of any poor person, or upon any proof before them there to be made, of notice of any such appeal to have been given by the proper officer to the church wardens or overseers of the poor of any parish or place (though they did not afterwards prosecute such appeal) shall, at the same quarter sessions, award and order to the party for whom and in whose behalf such appeal shall be determined, or to whom such notice did appear to have been given, as aforesaid, such costs and charges in the law, as by the said justices in their discretion shall be thought most reasonable and just, to be paid by the church-wardens, overseers of the poor, or any other person, against whom such appeal shall be determined, or by the person that did give such notice, as aforesaid; and if the person ordered to pay such costs shall happen to live in any county, riding, city, or town corporate, or elsewhere, out of the jurisdiction of the said court, it shall and may be lawful for any justice of the peace of the county, riding, city, liberty, or town-corporate, wherein such person shall inhabit, and every such justice is hereby required, upon request to him for that purpose to be made, and a true copy of the order for the payment of such costs produced, and proved by some credible witness upon oath, by warrant under his hand and seal, to cause the money mentioned in that order to be levied by distress and sale of the goods of the person that is ordered and ought to pay the same; and if no such distress can or may be had, to commit such person to the common gaol of that county or liberty, there to remain by the space of twenty days.

Person ordered to pay costs living out of the jurisdiction, justice of the county, &c. where such person inhabits, may cause the money to be levied; If no distress, offender to be committed to gaol.

Single persons not deemed to have a good settlement in any parish under 1 year's continuance.

Sect. 4. "And whereas some doubts have arisen touching the settlement of unmarried persons, not having child or children, lawfully hired into any parish or town for one year: be it therefore enacted and declared by the authority aforesaid, That no such person so hired as aforesaid, shall be adjudged or deemed to have a good settlement in any such parish or township, unless such person shall continue and abide in the same service during the space of one whole year.

Appeal against any order for removal of poor person to be determined at the quarter-sessions.

Sect. 6. "And be it further enacted by the authority aforesaid, That from and after the first day of May, one thousand six hundred ninety-seven, the appeal against any order for the removal of any poor person from out of any parish, township, or place, shall be had, prosecuted, and determined, at the general or quarter-sessions of the peace for the county, division, or riding, wherein the parish, township, or place, from whence such poor person shall be removed, doth lie, and not elsewhere; any former law or statute to the contrary thereof in any wise notwithstanding.

This act not to make void church-war-

Sect. 7. "Provided always, That nothing in this act contained shall extend, or be construed to extend, to make void any promise or engage-

ment

ment already made by the churchwardens or overseers of the poor of any parish, township, or place, to receive and take back any persons, in case they should become poor, or want relief.

Sect. 8. "Provided, That this act, nor any thing therein contained, shall be construed to hinder the justices of the peace within the liberty of Saint Albans from hearing and determining any appeals for the settlement of the poor in their quarter-sessions, as they might have done before the making of this act; any thing therein contained to the contrary in any wise notwithstanding."

Geo. 1, c. 7, s. 7. The like provision is made for the borough of St. Peter and hundreds of in Northamptonshire.

STAT. 9 & 10 Will. 3, c. 11, [A. D. 1698, intituled] "An act for explaining an act made the last session of parliament, intituled, *An act for supplying some defects in the laws for the relief of the poor of this kingdom.*"

"Whereas in and by a certain act made in the last session of this present parliament, intituled, *An act for supplying some defects in the laws for the relief of the poor of this kingdom*, it was amongst other things therein contained, enacted, That if any person or persons whatsoever, that from and after the first day of May, in the year of our Lord one thousand six hundred ninety-seven, shall come into any parish or other place, there to inhabit and reside, should at the same time procure, bring, and deliver to the churchwardens, or overseers of the poor of the parish or place where any such person should come to inhabit, or to any or either of them, a certificate under the hands and seals of the churchwardens and overseers of the poor of any other parish, township, or place, or the major part of them, or under the hands and seals of the overseers of the poor of any other place where there are no churchwardens, to be attested respectively by two or more credible witnesses, thereby owning and acknowledging the person or persons, mentioned in the said certificate, to be an inhabitant or inhabitants legally settled in that parish, township, or place, every such certificate having been allowed of and subscribed by two or more of the justices of the peace of the county, city, liberty, borough, or town-corporate, wherein the parish or place from whence any such certificate shall come doth lie, shall oblige the said parish or place to receive and provide for the person mentioned in the certificate, with his or her family, as inhabitants of that parish, whenever he, she, or they shall happen to become chargeable to, or be forced to ask relief of, the parish, township, or place, to which such certificate was given; and that then, and not before, it should and might be lawful for any such person, and his or her children, though born in that parish, not having otherwise acquired a legal settlement there, to be removed, conveyed, and settled in the parish or place from whence such certificate was brought: and whereas some doubts have arisen upon construction of the said act, by what acts any person coming to inhabit or reside within any parish, by virtue of any such certificate, as aforesaid, may procure a legal settlement in such parish,

No person ad- judged to have a legal settle- ment in any parish, unless he lease a te- nement of 10 l. per an. or execute some parish office.

and whether such certificate did not amount to a notice in writing, in order to gain a settlement: for explaining thereof, and of the said act, be it therefore enacted and declared by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That no person or persons whatsoever, who shall come into any parish, by any such certificate, as aforesaid, shall be adjudged by any act whatsoever to have procured a legal settlement in such parish, unless he or they shall really and *bona fide* take a lease of a tenement of the yearly value of ten pounds, or shall execute some annual office in such parish, being legally placed in such office.

STAT. 8 *Ann. c. 9*, and 9 *Ann. c. 21*. See these acts under title **Apprentices**, p. 100, 104.

STAT. 12 *Ann. stat. 1, c. 18*, [*A. D. 1713*,] made, among other purposes, "for making perpetual the act made in the thirteenth and fourteenth years of the reign of the late king *Charles* the second, intituled, *An act for the better relief of the poor of this kingdom*; and that persons bound apprentices to, or being hired servants with persons coming with certificates, shall not gain settlements by such services or apprenticeships."

13 & 14 Car. 2, c. 12. "Whereas an act made in the thirteenth and fourteenth years of the reign of the late king *Charles* the second, [intituled, *An act for the better relief of the poor of this kingdom*,] was enacted to have continuance (except what related to the corporations therein mentioned, and thereby constituted) only until the twenty-ninth day of *May*, one thousand six hundred sixty-five, and from thence to the end of the first sessions of the next parliament; which said act, by an act made in the first year of the reign of the late king *James* the second, (except what related to the corporations therein mentioned, and thereby constituted) was enacted to be in force from the first day of *May* one thousand six hundred eighty-five, and so to continue for the space of seven years, and from thence to the end of the next sessions of parliament; and by an act made in the third and fourth years of the reign of king *William* and queen *Mary*, the said act (as to what therein related to the settlement of the poor) was enacted to be in force from the first day of *March*, one thousand six hundred ninety-one; but no provision was thereby made for continuing divers other parts of the said act, which said act, [intituled, *An act for the better relief of the poor of this kingdom*,] as to all parts thereof, not mentioned and continued in and by the said act made in the third and fourth years of their late majesties (other than and except what relates to the corporations mentioned in the said act, [*For the better relief of the poor of this kingdom*,] and thereby constituted) was, by an act made in the fourth and fifth years of the reign of their late majesties, continued only for the space of seven years, from the thirteenth day of *February*, one thousand six hundred ninety-two, and from thence to the

1 Jac. 2, c. 17.

3 & 4 W. & M. sess. 3, c. 11.

4 & 5 W. & M. sess. 4, c. 24, sess. 11.

the end of the next session of parliament; which said act afterwards by an act of the eleventh and twelfth years of the reign of the late king *William* ^{11 & 12 W. 3.} the third, [intituled, *An act for continuing several laws therein mentioned.*] ^{c. 15.} was continued only for seven years, from the twenty-ninth day of *September*, one thousand seven hundred; and which said act of the thirteenth and fourteenth years of the reign of the said late king *Charles* the second, [intituled, *An act for the better relief of the poor of this kingdom,*] by an act made in the fifth year of the reign of her present majesty, [intituled, *An act for continuing the laws therein mentioned relating to the poor, and to the buying and selling of cattle in Smithfield, and for suppressing of piracy,*] was enacted to be in force from the twenty-fifth day of *March*, one thousand seven hundred and seven (except what relates to the corporations therein mentioned, and thereby constituted) only for seven years, and from thence to the end of the next sessions of parliament; which said act of the thirteenth and fourteenth years of the reign of the said late king *Charles* the second, [intituled, *An act for the better relief of the poor of this kingdom,*] being found to be a very useful and necessary law, and being near expiring; be it therefore enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That the said act, made in the thirteenth and fourteenth years of the said late king *Charles* the second, [intituled, *An act for the better relief of the poor of this kingdom,*] shall be, and is hereby made perpetual. ^{The act 13 & 14 Car. 2, c. 12, made perpetual.}

Sec. 2. " And whereas by an act made in the eighth and ninth years of the reign of the late king *William* the third, [intituled, *An act for supplying some defects in the laws for the relief of the poor of this kingdom,*] it was; ^{8 & 9 W. 3. c. 30.} amongst other things, enacted, in the words following (*viz.*) That if any person or persons whatsoever, that from and after the first day of *May*, one thousand six hundred ninety-seven, shall come into any parish or other place, there to inhabit and reside, shall at the same time procure, bring, and deliver to the church-wardens or overseers of the poor of the parish, or place, where any such person shall come to inhabit, or to any or either of them, a certificate under the hands and seals of the church-wardens and overseers of the poor of any other parish, township, or place, or the major part of them, or under the hands and seals of the overseers of the poor of any other place where there are no church-wardens, to be attested respectively by two or more credible witnesses, thereby owning and acknowledging the person or persons mentioned in the said certificate to be an inhabitant or inhabitants legally settled in that parish, township, or place, every such certificate, having been allowed of, and subscribed by two or more of the justices of the peace of the county, city, liberty, borough, or town corporate, wherein the parish or place, from whence any such certificate shall come, doth lie, shall oblige the said parish or place to receive and provide for the person mentioned in the said certificate, together with his or her family, as inhabitants of that parish whenever he, she, or they, shall happen to become chargeable to, or be

forced to ask relief of the parish, township, or place, to which such certificate was given; and then, and not before, it shall and may be lawful for any such person, and his or her children, though born in that parish, not having otherwise acquired a legal settlement there, to be removed, conveyed, and settled, in the parish or place from whence such certificate was brought: and whereas many persons obtaining and bringing such certificates, do frequently take apprentices, bound by indenture, and hire and keep servants by the year, who, by reason of such apprenticeships and services, do gain settlements in, and become a great burthen to such parishes, townships, and places, though such masters coming with such certificates, have, by virtue thereof, no settlements in such parishes, townships, or places: for remedy whereof, it is declared and enacted by the

After 24 June, 1713, any person bound apprentice, or being a hired servant, to one who came into a parish by certificate, shall not gain a settlement there by reason of such apprenticeship, &c.. authority aforesaid, That if any person whatsoever, who, upon or after the four and twentieth day of June, one thousand seven hundred and thirteen, shall be an apprentice, bound by indenture to, or shall, upon or after the said four and twentieth day of June, one thousand seven hundred and thirteen, be a hired servant to or with any person whatsoever, who did come into or shall reside in any parish, township, or place, in that part of Great Britain called England, by means or licence of such certificate, and not afterwards having gained a legal settlement in such parish, township, or place, such apprentice, by virtue of such apprenticeship, indenture, or binding, and such servant, by being hired by, or serving as a servant, as aforesaid, to such person, shall not gain or be adjudged to have any settlement in such parish, township, or place, by reason of such apprenticeship or binding, or by reason of such hiring or serving therein; but every such apprentice and servant shall have his and their settlements in such parish, township, or place, as if he or they had not been bound apprentice or apprentices, or had not been an hired servant or servants, to such person, as aforesaid; any act or acts of parliament to the contrary notwithstanding.

STAT. 5 Geo. I, c. 8, [A. D. 1718, intituled] “An act for the more effectual relief of such wives and children, as are left by their husbands and parents, upon the charge of the parish.”

“Whereas divers persons run or go away from their places of abode into other counties or places, and sometimes out of the kingdom, some men leaving their wives, a child or children, and some mothers run or go away, leaving a child or children, upon the charge of the parish or place where such child or children was or were born, or last legally settled, although such persons have some estates, which should ease the parish of their charge, in whole or in part: may it please your majesty therefore that it may be enacted; and be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That it shall and may be lawful for the church-wardens, &c. may by warrant from two justices, seize

wardens

wardens or overseers of the poor of such parish or place where any such wife, or child or children, shall be so left, upon application to, and by warrant or order from any two justices of the peace, to take and seize so much of the goods and chattels, and receive so much of the annual rents and profits of the lands and tenements of such husband, father, or mother, as such two justices of the peace, as aforesaid, shall order or direct, for or towards the discharge of the parish or place where such wife, child, or children are left, for the bringing up and providing for such wife, child, or children; which warrant or order being confirmed at the next quarter-sessions, it shall be lawful for the justices of such quarter-sessions to make an order for the church-wardens or overseers for the poor of such parish or place, to dispose of such goods or chattels by sale, or otherwise, or so much of them, for the purposes aforesaid, as the court shall think fit, and to receive the rents and profits, or so much of them, as shall be ordered by the sessions, as aforesaid, of his or her lands and tenements, for the purposes aforesaid.

the goods, &c. of husbands and parents, who leave their wives and children upon the parish.

Such warrant to be confirmed at quarter-sessions, who may make an order for sale, &c.

Sec. 2. "And be it enacted by the authority aforesaid, That the church-wardens and overseers aforesaid shall be accountable to the justices at the quarter sessions for all such money as they, or any of them, shall receive by virtue of this act.

Church-wardens, &c. to be accountable to justices in sessions.

STAT. 9 Geo. I, c. 7, [A. D. 1722, intituled] "An act for amending the laws relating to the settlement, employment, and relief of the poor."

"Whereas by an act of parliament, made and passed in the third and fourth years of the reign of their late majesties king *William* and queen *Mary*, it was provided, That in every parish a book or books should be kept, wherein the names of all persons, who did or might receive collections, should be registred, with the time when they were first admitted to such relief, and the occasion which brought them under that necessity; and that no such person should be allowed to have or receive collection at the charge of the parish, but by authority, or under the hand of one justice of peace residing in such parish, or if none there dwelling, in the parts near or next adjoining, or by order of the justices at their quarter-sessions, except in case of pestilential diseases, plague, or small-pox: and whereas under colour of the proviso in the said act, many persons have applied to some justice of peace, without the knowledge of any officers of the parish, and thereby, upon untrue suggestions, and sometimes upon false or frivolous pretences, have obtained relief, which hath greatly contributed to the encrease of the parish-rates: for remedy whereof, be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by authority of the same, That from and after the twenty-fifth day of *March*, which shall be in the year one thousand seven hundred and twenty-three, no justice of peace shall order relief to any poor person dwelling in any parish, until oath be made before such justice of some matter, which he shall judge to be a reasonable cause or ground for having

3 & 4 W. & M. c. 11, s. 11.

No poor to be relieved till oath made of a reasonable cause.

ing.

ing such relief; and that the same person had by himself, herself, or some other, applied for relief to the parishioners of the parish, at some vestry or other public meeting of the said parishioners, or to two of the overseers of the poor of such parish, and was by them refused to be relieved, and until such justice hath summoned two of the overseers of the poor to shew cause why such relief should not be given, and the person so summoned hath been heard, or made default to appear before such justice; any thing in the said proviso, or any law to the contrary notwithstanding.

Sett. 2. " And be it further enacted by the authority aforesaid, That the person, whom any such justice of peace shall think fit to order to be relieved, shall be entred in such book or books so to be kept by the parish, or longer than as one of those who is to receive collection, as long as the cause for such the cause continues. relief continues, and no longer; and that no officer of any parish shall (except upon sudden and emergent occasions) bring to the account of the parish any monies he shall give to any poor person of the same parish, who is not registred in such book or books to be kept by the said parish, as a person intituled to receive collection, on pain of forfeiting the sum of five pounds, to be levied by distress and sale, by warrant of any two or more justices of the peace of the same county, who shall have examined into and found him guilty of such offence; which said sum shall be applied to and for the use of the poor of the said parish, by direction of the said justice or justices of the peace.

Sett. 4. " And for the greater ease of parishes in the relief of the poor, Church-wardens, &c. may purchase, &c. houses to lodge or employ the poor in. be it further enacted by the authority aforesaid, That it shall and may be lawful for the church-wardens and overseers of the poor, in any parish, town, township, or place, with the consent of the major part of the parishioners or inhabitants of the same parish, town, township, or place, in vestry, or other parish or public meeting for that purpose assembled, or of so many of them as shall be so assembled, upon usual notice thereof first given, to purchase or hire any house or houses in the same parish, township, or place, and to contract with any person or persons for the lodging, keeping, and maintaining, and employing any or all such poor in their respective parishes, townships or places, as shall desire to receive relief or collection from the same parish, and there to keep, maintain, and employ all such poor persons, and take the benefit of the work, labour, and service of any such poor person or persons, who shall be kept or maintained in any such house or houses, for the better maintenance and relief of such poor person or persons, who shall be there kept or maintained; and in case any poor person or persons of any parish, town, township, or place, where such house or houses shall be so purchased or hired, shall refuse to be lodged, kept, or maintained in such house or houses, such poor person or persons so refusing shall be put out of the book or books where the names of the persons, who ought to receive collection in the said parish, town, township, or place, are to be registred, and shall not be entitled to ask or receive collection or relief from the church-wardens and overseers of the poor of the same parish, town, or township, and where any parish, town

or

or township shall be too small to purchase or hire such house or houses for the poor of their own parish only, it shall and may be lawful for two or more such parishes, towns, or townships, or places, with the consent of the major part of the parishioners or inhabitants of their respective parishes, town, township, or places, in vestry or other parish or public meeting for that purpose assembled, or of so many of them, as shall be so assembled, upon usual notice thereof first given, and with the approbation of any justice of peace dwelling in or near any such parish, town, or place, signified under his hand and seal, to unite in purchasing, hiring, or taking such house, for the lodging, keeping, and maintaining of the poor of the several parishes, townships, or places so uniting, and there to keep, maintain, and employ the poor of the respective parishes so uniting, and to take and have the benefit of the work, labour, or service of any poor there kept and maintained, for the better maintenance and relief of the poor there kept, maintained, and employed; and that if any poor person or persons in the respective parishes, townships, or places so uniting, shall refuse to be lodged, kept, and maintained in the house, hired or taken for such uniting parishes, townships, or places, he, she, or they so refusing, shall be put out of the collection-book, where his, her, or their names were registred, and shall not be intitled to ask or demand relief or collection from the church wardens and overseers of the poor in their respective parishes, townships, or places; and that it shall and may be lawful for the church-wardens and overseers of the poor of any parish, township, or place, with the consent of the major part of the parishioners or inhabitants of the said parish, township, or place, where such house or houses is, are, or shall be purchased or hired for the purposes aforesaid, in vestry, or other parish, or public meeting, for that purpose assembled, or of so many of them, as shall be so assembled, upon usual notice thereof first given, to contract with the church-wardens and overseers of the poor of any other parish, township, or place, for the lodging, maintaining, or employing, of any poor person or persons of such other parish, township, or place, as to them shall seem meet; and in case any poor person or persons of such other parish, township, or place, shall refuse to be lodged, maintained, and employed, in such house or houses, he, she, or they, so refusing, shall be put out of the collection-book of such other parish, township, or place, where his, her, or their names were registred, and shall not be entitled to ask, demand, or receive any relief or collection from the church-wardens and overseers of the poor of his, her or their respective parish, township, or place: provided always, That no poor person or persons, his, her, or their apprentice, child, or children, shall acquire a settlement in the parish, town, or place, to which he, she, or they are removed by virtue of this act, but that his, her, or their settlement, shall be and remain in such parish, town, or place, as it was before such removal; any thing in this act to the contrary notwithstanding.

One parish, &c. being too small for such purchase, two may unite, &c.

Church-wardens, &c. of one parish may contract with those of another, &c.

Settlement to be as before removal.

Sec. 5. " And be it further enacted by the authority aforesaid, That from and after the twenty-fifth day of *March*, which shall be in the year

Settlement,
how to be ac-
quired by pur-
chase.

of our Lord one thousand seven hundred and twenty-three, no person or persons shall be deemed, adjudged, or taken, to acquire or gain any settlement in any parish or place, for or by virtue of any purchase of any estate or interest in such parish or place; whereof the consideration for such purchase doth not amount to the sum of thirty pounds, *bona fide* paid, for any longer or further time, than such person or persons shall inhabit in such estate, and shall then be liable to be removed to such parish or place, where such person or persons were last legally settled, before the said purchase and inhabitancy therein

Paying taxes
to the scav-
enger, gains no
settlement.

Sett. 6. " And be it further enacted by the authority aforesaid, That no person or persons whatsoever, who, from and after the twenty-fifth day of *March*, in the year of our Lord one thousand seven hundred and twenty three, shall be taxed, rated, or assessed to the scavenger or repairs of the highway, and shall duly pay the same, shall be deemed or taken to have any legal settlement in any city, parish, town, or hamlet, for or by reason of his, her, or their paying to such scavenger's rate or repairs of the highway, as aforesaid; any law to the contrary in any wise, notwithstanding.

8 & 9 W. 3,
c. 30.

Sett. 7. " And whereas there was a clause in the statute, made in the eighth and ninth year of his late majesty king *William* the Third, intituled, *An act for the supplying some defects in the law, for the relief of the poor of this kingdom*, whereby it was enacted, That after the first day of *May*, one thousand six hundred ninety-seven, all appeals against any order for the removing of any poor persons, should be heard at the quarter sessions of the county or division, wherein the parish or place, from whence such person should be removed, doth lie, and not elsewhere, except the liberty of *Saint Albans*; be it enacted by the authority aforesaid, That it shall and may be lawful for the justices of the peace, within the liberty of the borough of *Saint Peter*, and hundred of *Nassa-borough* in the county of *Northampton*, to hear and determine all appeals to them made, against any order made for removal of any poor person, in their quarter-sessions, as they might have done before the making of the said last mentioned act; any thing therein or in this present act contained to the contrary thereof in any wise notwithstanding.

Justices of St.
Peter and
hundred of
Nassa-bo-
rough in
Northamp-
ton-shire may
determine ap-
peals.

Sett. 8. " And whereas several disputes and controversies have arisen and been concerning the time of notice to be given of appeals from orders of removals of poor persons, to prevent the same, as much as may be for the future, be it enacted by the authority aforesaid, That from and after the said twenty-fifth day of *March*, one thousand seven hundred and twenty-three, no appeal or appeals from any order or orders of removal of any poor person or persons whatsoever from any parish or place to another, shall be proceeded upon in any court or quarter-sessions, unless reasonable notice be given by the church-wardens or overseers of the poor of such parish or place, who shall make such appeal, unto the church-wardens or overseers of the poor of such parish or place, from which such poor person or persons shall be removed; the reasonableness of which notice shall be determined by the justices of the peace at the quarter-sessions

Reasonable
notice is to be
given of ap-
peals.

sions, to which the appeal is made; and if it shall appear to them that reasonable time of notice was not given, then they shall adjourn the said appeal to the next quarter-sessions, and then and there finally hear and determine the same.

Sett. 9. "And for the preventing of vexatious removals, be it further enacted by the authority aforesaid, That from and after the twenty-fourth day of *June*, in the year of our Lord one thousand seven hundred and twenty-three, if the justices of the peace shall, at their quarter-sessions, upon an appeal before them there had concerning the settlement of any poor person, determine in favour of the appellant, that such poor person or persons was or were unduly removed, that then the said justices shall, at the same quarter-sessions, order and award to such appellant so much money, as shall appear to the said justices to have been reasonably paid by the parish, or other place, on whose behalf such appeal was made, for or towards the relief of such poor person or persons, between the time of such undue removal, and the determination of such appeal; the said money so awarded to be recovered in the same manner, as costs and charges upon an appeal are prescribed to be recovered by the said statute made in the ninth year of his late majesty king *William* the Third, intituled, *8 & 9 W. 3. An act for supplying some defects in the laws for the relief of the poor of this kingdom.*" *c. 30.*

Justices, how to relieve the appellant on undue removals.

STAT. 3 *Geo.* 2, c. 29, [*A. D.* 1730] made, among other purposes, "for making further provision concerning certificates relating to the settlements of poor persons, and the charges of maintaining and removing certificated persons."

Sett. 8. "And to prevent disputes, which often happen, touching the proof of certificates given by the officers of any parish or place, acknowledging any person or persons, therein named, to be an inhabitant or inhabitants legally settled in such parish, town, or place, by virtue of an act of parliament made in the eighth and ninth years of the reign of his late majesty king *William* the Third, and for making such certificates more effectual, be it enacted by the authority aforesaid, That from and after the twenty-fourth day of *June*, in the year of our Lord one thousand seven hundred and thirty, the witnesses, who attest the execution of such certificates by the church-warden or church-wardens, overseer or overseers, signing and sealing the same, or one of the said witnesses, shall make oath before the justices of the peace, who by the said act are directed to allow the same (which oath they are hereby authorized to administer) that such witness or witnesses did see the church-warden or church-wardens, overseer or overseers, whose names and seals are thereunto subscribed and set, severally sign and seal the said certificate, and that the names of such witnesses attesting the said certificate are of their own proper hand writing; which said justices of the peace shall also certify that such oath was made before them; and every such certificate so allowed, and oath of the execution thereof so certified, by the said justices of the peace, shall be taken,

Witness to certificates of settlements to swear that they saw the church-wardens, &c. sign them.

deemed, and allowed, in all courts whatsoever, as duly and fully proved, and shall be taken and received as evidence, without other proof thereof, and that all certificates given in pursuance of the said act, before the said twenty-fourth day of *June*, one thousand seven hundred and thirty, shall be also taken and allowed in all courts as evidence, without other proof; provided the same are duly allowed by two justices of the peace, as by the said act is required.

Sec. 9. "And whereas by an act made in the eighth and ninth years of the reign of his late majesty king *William* the Third, intituled, *An act for supplying some defects in the laws for the relief of the poor of this kingdom*, all parishes and places are obliged to receive and entertain as inhabitants all and every person and persons, and their families, which come from any other parishes or places with such certificates of their settlement, as in the said act are directed and required, until such certificate persons become chargeable, in which case, and no others, the parishes and places, to which they have been sent by certificate, are authorized to reconvey, and those from whence they came, required to receive, the said certificate persons, and their families, as their proper parishioners and inhabitants; but no provision is made in the said act for reimbursing the parishes and places the charges they may be put to in reconveying the said certificate persons to their former parishes, and settlements, or for the maintenance of them, when sick or disabled, till they may be in a condition to be so removed, whereby divers parishes and places are often put to great and unavoidable expences in removing and maintaining such certificate persons and their families: now to remedy and prevent the same for the future, be it enacted by the authority aforesaid, That when any overseer or overseers of the poor of any parish or place, or other person, shall remove back any person or persons, or their families, residing in such parish or place, or sent thither by certificate, and becoming chargeable, as aforesaid, to the parish or place to which such person or persons shall belong, such overseers, or other persons shall be reimbursed such reasonable charges as they may have been put unto, in maintaining and removing such person or persons, by the church-wardens or overseers of the poor of the parish, or place, to which such person or persons is or are removed, the said charges being first ascertained and allowed of by one or more of his majesty's justices of the peace for the county or place to which such removal shall be made; which said charges, so ascertained and allowed, shall in case of refusal of payment, be levied by distress and sale of the goods and chattels of the church-wardens and overseers of the poor of the parish or place to which such certificate person or persons is or are removed by warrant or warrants under the hand and seal, or hands and seals, of such justice or justices, returning the overplus, if any there be; which warrant or warrants he or they are hereby required to grant."

Overseers to
be reimbursed
on reconvey-
ing certificate
persons.

By

By *Stat. 5 Geo. 2, c. 19*, justices at sessions may rectify defects of form on appeals, and may proceed to determine them. See this act at large under title *Certiorari*, p. 583.

STAT. 17 *Geo. 2, c. 3*, [*A. D. 1744, intituled*,] “An act to oblige overseers of the poor to give public notice of rates made for the relief of the poor, and to produce the same.”

“Whereas great inconveniencies do often arise in cities, towns-corporate, parishes, townships, and places, by reason of the unlimited power of the church-wardens and overseers of the poor, who frequently, on frivolous pretences, and for private ends, make unjust and illegal rates in a secret and clandestine manner, contrary to the true intent and meaning of a statute made in the forty and third year of the reign of queen *Elizabeth*,^{43 Eliz. c. 2:} intituled, *An act for the relief of the poor*; for remedy whereof, and preventing the like abuses for the future, be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, That from and after the first day of *May*, one thousand seven hundred and forty-four, the church-wardens and overseers, one thousand seven hundred and forty-four, the church-wardens and overseers, be published in the church, or other persons authorized to take care of the poor in every parish, township, or place, shall give, or cause to be given, public notice in the church, of every rate for the relief of the poor, allowed by the justices of peace, the next *Sunday* after the same shall have been so allowed; and that no rate shall be esteemed or reputed valid and sufficient, so as to collect and raise the same, unless such notice shall have been given.

Secl. 2. “And be it further enacted, That the church-wardens and overseers of the poor, or other persons authorized, as aforesaid, in every parish, township, or place, shall permit all and every the inhabitants of the said parish, township, or place, to inspect every such rate at all reasonable times, paying one shilling for the same, and shall, upon demand, forthwith give copies of the same, or any part thereof, to any inhabitant of the said parish, township, or place, paying at the rate of six pence for every twenty-four names. The rates to be inspected by any inhabitant, and copies taken.

Secl. 3. “And be it further enacted, That if any church-warden or overseer of the poor, or other person authorized as aforesaid, shall not permit any inhabitant or parishioner to inspect the said rates, or shall refuse or neglect to give copies thereof as aforesaid, such church-warden or overseer, or other person authorized as aforesaid, for every such offence, shall forfeit and pay to the party aggrieved, the sum of twenty pounds, to be sued for and recovered by action of debt, bill, plaint, or information, in any of his majesty's courts of record, wherein no essoin, protection, or wager of law, or more than one imparlance, shall be allowed. Penalty on not permitting any inhabitant to inspect, &c.

By *stat. 17 Geo. 2, c. 5*, all persons who threaten to run away and leave their children or wives to the parish, shall, on conviction, before one justice, by confession, or oath of one witness, be committed to the house of correction, for any time not exceeding one month. See this act at large under title **Urgants.**

STAT. 17 *Geo. 2, c. 37*, [*A. D. 1744, intituled*] “An act to prevent disputes touching the parishes or places where improved wastes, and drained and improved marsh lands, shall be charged to parochial rates.”

“Whereas in divers counties great quantities of waste and barren lands, and lands which were formerly fen or marsh ground, or covered with water, have been of late years improved or drained, and are now of very considerable annual value, and the inhabitants therein, and occupiers thereof, ought to bear and pay a proportionable part of the rates made for the relief of the poor, and to be subject to such charges, and in like manner as other inhabitants and occupiers of lands, houses, tythes impropriate, appropriations of tythes, coal-mines, and saleable underwoods, are by an act
43 Eliz. c. 2. made in the forty-third year of the reign of queen *Elizabeth*, intituled, *An act for the relief of the poor*, and likewise to bear and pay a proportionable part of all other parochial rates; but great difficulties frequently arise in determining to what parish or place such lands belong, or ought to be rated; be it therefore enacted by the king’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That from and after the twenty-fourth day of *June*, one thousand seven hundred and forty-four, where there shall be any dispute or uncertainty in what parish or place such lands heretofore improved or drained, or hereafter to be improved or drained lie, and ought to be rated; all and every the occupier and occupiers of such lands, or houses built thereon, tenements, tythes arising therefrom, mines therein, and saleable underwoods therein growing or hereafter to grow, shall be rated and assessed to the relief of the poor, and to all other parochial rates within such parish and place which lies nearest to such lands, in like manner and form, and subject to the same directions and regulations as all other lands within such parish and place are by law liable to be rated and assessed thereunto; and if on application to the officers of such parish or place to have such improved or drained lands rated and assessed as aforesaid, any dispute or difference shall arise touching what parish or place such lands ought to be rated and assessed in, it shall and may be lawful to and for the justices of peace for the county, riding, liberty or division where such lands lie, at their next general quarter-sessions to be held for such county, riding, liberty or division, after such application made as aforesaid, and after notice given to the officers of the several parishes and places abutting upon and adjoining

Drained lands to pay parochial taxes.

Justices in general quarter-sessions to hear and determine disputes.

joining to such lands, and to all other persons claiming and interested therein, to hear and determine the same on the appeal of any person interested, and at such sessions to cause such lands or hereditaments as aforesaid to be allotted to, and fairly and equally assessed in such parish or place as they shall see just and meet, and such determination and allotment shall at all times thereafter be final and conclusive to and upon the said several parishes and places, and all other persons whatsoever, as to the parish or place in which such lands and hereditaments shall be rated and assessed to the poor, and all other parochial rates as aforesaid; and the said lands and hereditaments shall, at all times after such determination and allotment, be rated and assessed to the relief of the poor, and to all other parochial rates within such parish and parishes, place and places only, to which they shall respectively have been so allotted as aforesaid; any law, custom or usage to the contrary in any wise notwithstanding.

Sec. 2. " Provided always, and it is hereby enacted and declared by the authority aforesaid, That nothing in this act contained, nor any allotment to be made by the justices of the peace at their general quarter-sessions in pursuance and by virtue thereof, shall extend to, or be deemed or construed to extend to, or in any wise affect or determine the boundaries of any parish or parishes, place or places, to any intent or purpose, other than for the purpose of rating and assessing such lands, tenements, and hereditaments to the relief of the poor, and to all other parochial rates within such parish or place to which they shall be so allotted as aforesaid; any thing herein contained to the contrary thereof in any wise notwithstanding.

Sec. 3. " Provided always, and be it declared, That nothing in this act shall extend or be construed to extend to invalidate, make void, or in any wise alter a clause in an act of parliament made in the sixteenth and seventeenth year of the reign of king Charles the second, intituled, *An act* ^{16 & 17 Car.} *for draining of the fen called Deeping Fen, and other fens therein mentioned,* ^{2, c. 11.} whereby it is enacted, That the trustees therein named, their heirs and assigns, or the survivor of them, their or any of their tenants, farmers or ground holders of any part of the third part of the said fen, or of the five thousand acres therein mentioned, should not have any time hereafter, use or claim, any common of pasture, or other commonage of pasturing in any part of the remainder of the said fens, nor any of them, nor in the north fen of *Pinchbeck* and *Spalding*, nor any part thereof, by virtue or pretence of his or their resistance there; but all and every the inhabitants that might thereafter be upon any part of the said third part, or upon any part of the said five thousand acres, and were not able to maintain themselves, should be maintained and kept by the said trustees, their heirs and assigns, and the survivor of them, and never become chargeable in any kind to all or any the respective parishes wherein such inhabitant or inhabitants should reside or dwell; any statute or law to the contrary thereof in any wise notwithstanding.

The poor to be maintained by the trustees.

STAT. 17 Geo. 2, c. 38, [A. D. 1744, intituled]. "An act for remedying some defects in the act made in the forty-third year of the reign of queen Elizabeth, intituled, *An act for the relief of the poor*."

43 Eliz. c. 2. "Whereas by reason of some defects in an act of parliament made in the three and fortieth year of the reign of the late queen Elizabeth, intituled, *An act for the relief of the poor*, the money raised for that purpose is liable to be misapplied, and there is often great difficulty and delay in raising of the same; for remedy whereof may it please your most excellent majesty that it may be enacted; and be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That from and after the twenty-fourth day of June, one thousand seven hundred and forty-four, the church-wardens and overseers of the poor shall yearly and every year, within fourteen days after other overseers shall be nominated and appointed to succeed them, deliver in to such succeeding overseers, a just, true and perfect account in writing, fairly entred in a book or books to be kept for that purpose, and signed by the said church-wardens and overseers hereby directed to account as aforesaid, under their hands, of all sums of money by them received, or rated and assessed, and not received; and also of all goods, chattels, stock and materials that shall be in their hands, or in the hands of any of the poor, in order to be wrought, and of all monies paid by such church-wardens and overseers so accounting, and of all other things concerning their said office; and shall also pay and deliver over all sums of money, goods, chattels, and other things, as shall be in their hands, unto such succeeding overseers of the poor; which said account shall be verified by oath, or by the affirmation of persons called Quakers, before one or more of his majesty's justices of the peace, which said oath or affirmation such justice or justices is and are hereby authorized and required to administer, and to sign and attest the caption of the same, at the foot of the said account, without fee or reward; and the said book or books shall be carefully preserved by the church-wardens and overseers, or one of them, in some public or other place in every parish, township or place; and they shall and are hereby required to permit any person there assessed, or liable to be assessed, to inspect the same, at all seasonable times, paying six pence for such inspection, and shall, upon demand, forthwith give copies of the same, or any part thereof, to such person, paying at the rate of six-pence for every three hundred words, and so in proportion for any greater or less number.

At what time parish officers shall make up their accounts.

Books may be inspected, paying 6d. and copies taken, paying 6d. for 300 words.

Penalty on parish officer's not account-

Set. 2. "And it is hereby further enacted, That in case such church-wardens and overseers of the poor or any of them, shall refuse or neglect

make and yield up such account, verified as aforesaid, within the time herein before limited or appointed, or shall refuse or neglect to pay and deliver over such sum or sums of money, goods, chattels and other things in their hands, as by this act is directed; in either of the said cases, it shall and may be lawful to and for any two or more justices of the peace, to commit him or them to the common gaol, until he or they shall have given such account, or shall have paid and yielded up such monies, goods, chattels and other things in their hands as aforesaid.

Sett. 3. "And be it further enacted by the authority aforesaid, That if any such overseer shall die, or remove from the place for which he was appointed, or become insolvent, before the expiration of his office, on oath thereof made, it shall be lawful for two justices of the peace to appoint another overseer in his stead, who shall continue in office until new overseers are appointed; and if any overseer shall remove as aforesaid, he shall, before such removal, deliver over to some church-warden, or other overseer of the same place, his accounts verified as aforesaid, with all rates, assessments, books, papers, sums of money, and other things concerning his office, under the like penalties as are inflicted by this act on an overseer refusing to do the same after the expiration of his office; and if any overseer shall die as aforesaid, his executors or administrators shall, within forty days after his decease, deliver over all things concerning his office to some church warden, or other overseer of the same place: and shall pay out of the assets left by such overseer, all sums of money remaining due, which he received by virtue of his said office, before any of his other debts are paid and satisfied.

Sett. 4. "And be it further enacted, That in case any person or persons shall find him, her, or themselves aggrieved by any rate or assessment made for the relief of the poor, or shall have any material objection to any person or persons being put on, or left out of such rate or assessment, or to the sum charged on any person or persons therein, or shall have any material objection to such account as aforesaid, or any part thereof, or shall find him, her, or themselves aggrieved by any neglect, act, or thing done or omitted by the church-wardens and overseers of the poor, or by any of his majesty's justices of the peace; it shall and may be lawful for such person or persons, in any of the cases aforesaid, giving reasonable notice to the churchwardens or overseers of the poor of the parish, township, or place, to appeal to the next general or quarter-sessions of the peace for the county, riding, division, corporation, or franchise, where such parish, township, or place lies; and the justices of the peace there assembled, are hereby authorized and required to receive such appeal, and to hear and finally determine the same; but if it shall appear to the said justices, that reasonable notice was not given, then they shall adjourn the said appeal to the next quarter-sessions, and then and there finally hear and determine the same; and the said justices may award and order to the party, for whom such appeal shall be determined, reasonable costs, in

the same manner that they are impowered to do in case of appeals concerning the settlement of poor persons by an act made in the eighth and ninth years of king *William the third*, intituled, *An act for supplying some defects in the laws for the relief of the poor of this kingdom.*

Provifo for corporations, Sec. *Sett. 5.* “ Provided always, That in all corporations or franchises, who have not four justices of the peace, it shall and may be lawful for any person or persons, in any of the cases aforesaid, where an appeal is given by this act, to appeal, if he or they shall think fit, to the next general or quarter sessions of the peace, for the county, riding, or division, wherein such corporation or franchise is situate.

How far justices shall give relief on appeals. *Sett. 6.* “ And whereas it hath been held, that upon appeals from rates and assessments, the justices of the peace may not only quash the old rates, but make new rates and assessments, from which no appeal can be had; be it enacted by the authority aforesaid, That upon all appeals from rates and assessments, the justices of the peace (where they shall see just cause to give relief) shall and are hereby required to amend the same, in such manner only as shall be necessary for giving such relief, without altering such rates or assessments, with respect to other persons mentioned in the same; but if upon an appeal from the whole rate, it shall be found necessary to quash or set aside the same, then, and in every such case, the said justices shall and are hereby required to order and direct the churchwardens and overseers of the poor to make a new equal rate or assessment, and they are hereby required to make the same accordingly.

Clause relating to warrants of distress. *Sett. 7.* “ And for the more effectual levying money assessed for the relief of the poor, be it enacted by the authority aforesaid, That the goods of any person assessed, and refusing to pay, may be levied by warrant of distress, not only in the place for which such assessment was made, but in any other place within the same county or precinct; and if sufficient distress cannot be found within the said county or precinct, on oath made thereof before some justice of any other county or precinct (which oath shall be certified under the hand of such justice on the said warrant) such goods may be levied in such other county or precinct by virtue of such warrant and certificate; and if any person shall find him or herself aggrieved by such distress as aforesaid, it shall and may be lawful for such person to appeal to the next general or quarter sessions of the peace for the county or precinct where such assessment was made, and the justices there are hereby required to hear and finally determine the same.

Appeal to quarter sessions. *Sett. 8.* “ And to prevent all vexatious actions against overseers of the poor, be it enacted by the authority aforesaid, That where any distress shall be made for any sum or sums of money, justly due for the relief of the poor, the distress itself shall not be deemed to be unlawful, nor the party or parties making it be deemed a trespasser or trespassers, on account of any defect, or want of form in the warrant for the appointment of such overseers, or in the rate or assessment, or in the warrant of distress thereupon; nor shall the party or parties distraining be deemed a trespasser or trespassers

Clause to prevent vexatious actions against overseers.

trespassers *ab initio*, on account of any irregularity, which shall be afterwards done by the party or parties distraining, but the party or parties aggrieved by such irregularity, shall or may recover full satisfaction for the special damage, he, she, or they shall have sustained thereby, and no more, in an action of trespass, or on the case, at the election of the plaintiff or plaintiffs.

Sett. 9. " Provided always, That where the plaintiff or plaintiffs shall ^{Plaintiff recover} recover in such action, he, she, or they shall be paid his, her, or their full costs of suit, and have all the like remedies for the same, as in other ^{recovering, to have full costs.} cases of costs.

Sett. 10. " Provided nevertheless, That no plaintiff or plaintiffs shall ^{Provide in} recover in any action for any such irregularity as aforesaid, if tender of ^{case of irregularity.} amends hath been made by the party or parties distraining, before such action brought.

Sett. 11. " And be it further enacted by the authority aforesaid, That ^{Succeeding} in case any person or persons shall refuse or neglect to pay to such ^{overseers to} overseers as aforesaid, any sum or sums of money that he, she, or they shall ^{levy arrears,} be legally rated or assessed to, it shall and may be lawful to and for the ^{to reimburse the former,} succeeding overseers, and they are hereby required to levy such arrears, and out of the money so levied to reimburse their predecessors all sums of money which they have expended for the use of the poor, and which are allowed to be due to them in their accounts, as aforesaid.

Sett. 12. " And whereas persons frequently remove out of parishes and places, without paying the rates assessed on them, and other persons do enter and occupy their houses or tenements part of the year, by reason whereof great sums are annually lost to such parishes and places; be it therefore enacted by the authority aforesaid, That where any person or ^{Clause concerning persons removing out of parishes.} persons shall come into, or occupy any house, land, tenement, or hereditament, or other premises, out of or from which any other person assessed shall be removed, or which at the time of making such rate was empty or unoccupied, that then every person so removing from, and every person so coming into or occupying the same, shall be liable to pay to such rate, in proportion to the time that such person occupied the same respectively, in the same manner, and under the like penalty of distress, as if such person so removing had not removed, or such person so coming in or occupying, had been originally rated and assessed in such rate; which said proportion, in case of dispute, shall be ascertained by any two or more of his majesty's justices of the peace.

Sett. 13. " And be it further enacted by the authority aforesaid, That ^{Copies of} true and just copies of all rates and assessments, hereafter to be made for ^{rates to be entered in a book,} the relief of the poor, be fairly wrote and entered in a book or books, to be provided for that purpose, by the church-wardens and overseers of the poor of every parish, township, or place, who shall take care that

such copies be wrote and entered accordingly, within fourteen days after all appeals from such rates are determined, and shall attest the same by putting their names thereto; and all and every such book or books shall be carefully preserved by the church-wardens and overseers of the poor for the time being, or one of them, in some public or other place, in every such parish, township, or place, whereto all persons assessed, or liable to be assessed, may freely resort, and shall be delivered over from time to time to the new and succeeding church-wardens and overseers of the poor, as soon as they enter into their said offices, to be preserved as aforesaid, and shall be produced by them at the general or quarter-sessions, when any appeal is to be heard or determined.

Penalty on parish officers not obeying this act. *Secl. 14.* "And be it further enacted by the authority aforesaid, That if any church-warden, overseer of the poor, or other officer of any parish, township, or place, shall neglect or refuse to obey and perform the several orders and directions of this act, or any of them, where no penalty is before provided by this act, or shall act contrary thereto; every such church-warden, overseer of the poor, or other officer so offending in the premises, shall, for every such offence, on oath thereof made, within two calendar months after the offence committed, before any two or more of his majesty's justices of the peace, forfeit, for the use of the poor of such parish, township, or place, a sum not exceeding five pounds, nor less than twenty shillings, to be levied by distress and sale of the offender's goods, by warrant from such justices; which sum shall be paid to some church-warden or overseer of the poor of such parish, township, or place, for the purpose aforesaid.

Power of overseers, where there are no church-wardens. *Secl. 15.* "And be it further enacted by the authority aforesaid, That overseers of the poor, within every township or place where there are no church-wardens, shall from time to time do, perform, and execute all and every the acts, powers, and authorities, concerning the relief of, and other matters and things relating to the poor, as church-wardens and overseers of the poor may do, perform, and execute by this act, or any former statute concerning the poor, and shall lose, forfeit, and suffer all such pains and penalties for neglect, abuse, or non-performance thereof, as church-wardens and overseers of the poor are liable to, by virtue of this or any former statute concerning the poor.

By

By *stat. 21 Geo. 2, c. 10*, persons assessed to and paying the duties on houses and windows, shall not thereby gain a settlement. See this act at large, under title **Windows**.

By *stat. 24 Geo. 2, c. 40*, no spirituous liquors shall be sold or used in any workhouse, or house of entertainment for parish poor. See title **Excise**, p. 56.

By *stat. 26 Geo. 2, c. 27*, no act or order of two or more justices to be vacated for defect only, in not expressing that one or more of such justices are of the quorum. See this act at large under title **Justices of the peace**, p. 735.

STAT. 31 Geo. 2, c. 11, [A. D. 1758, intituled] “ An act to amend an act made in the third year of the reign of king *William* and queen *Mary*, intituled, *An act for the better explanation, and supplying the defects of the former laws for the settlement of the poor*, so far as the same relates to apprentices gaining a settlement by indenture; and also to empower justices of the peace to determine differences between masters and mistresses and their servants in husbandry, touching their wages, though such servants are hired for less time than a year.”

“ Whereas by an act made in the third year of the reign of king *Wil-* Preamble.
liam and queen *Mary*, intituled, *An act for the better explanation, and supplying the defects of the former laws for the settlement of the poor*, it is enacted, That if any person shall be bound an apprentice by indenture, and inhabit in any town or parish, such binding and inhabitation shall be adjudged a good settlement: and whereas since the making the said act, great numbers of persons have been unwarily bound apprentices by certain deeds, writings, or contracts, not indented, by which binding many of them have suffered great loss and damage, on account of their having been refused a settlement in such town or parish, where they have been so bound and resided forty days, and have been removed to the parish or place where their last legal settlement was before such apprenticeship, where they have had no encouragement to exercise their trades, or opportunity to gain a livelihood by their said trades to which they were so bound apprentices: for relief therefore of such apprentices, and for preventing the like mischief for the future; be it enacted by the king’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, That no person who shall have been bound an apprentice, or who shall hereafter be bound an apprentice, by any deed, writing, or contract, not indented, being first legally stamped, shall be
Person bound apprentice by deed, &c. though not liable

indented, be- liable to be removed from the town, parish, or place, where he or she
ing first duly shall have been so bound an apprentice, and resident forty days, by virtue
stamped, is of any order of removal, granted by two justices of the peace, of yuo-
intituled to a county, riding, division, city, borough, town corporate, or place; ar
settlement by virtue of any order of the justices at their general or quarter sessions,
where ap- by reason or on account of such deed, writing, or contract, not being
prenticed. indented only.

Judgment, *Sett. 2.* " Provided nevertheless, That nothing herein before enacted,
&c. to the shall extend, or be construed to extend, to set aside or make void, any
contrary made judgment, order, or decree, which shall have been made as aforesaid,
before 1 May, judgment, before the first day of May, one thousand seven hundred and fifty-eight.
1758, not to
be avoided
hereby. *Sett. 3.* " And whereas by an act passed in the twentieth year of his
present majesty's reign, intituled, *An act for the better adjusting and more*

Act 20 Geo. 2. *easy recovery of the wages of certain servants, and for the better regulation of*
such servants, and of certain apprentices; it is enacted, That from and after
the twenty-fifth day of *March*, one thousand seven hundred and forty-
seven, all complaints, differences, and disputes, which shall arise between
masters or mistresses, and servants in husbandry, who shall be hired for
one year or longer, or which shall happen or arise between masters and
mistresses and artificers, handicraftsmen, miners, colliers, keelmen, pit-
men, glassmen, potters, and other labourers, employed for any certain
time, or in any other manner, shall be heard or determined by one or
more justice or justices of the peace, for the place where such master or
mistress shall inhabit: and whereas doubts have arisen whether the words
any labourers employed for any certain time, or in any other manner, ex-
tend to servants in husbandry hired for a less time than one year; for
obviating the said doubts, be it enacted by the authority aforesaid, That
the said act, and all and every clause and matter therein contained, shall
from and after the said first day of *May*, one thousand seven hundred and
fifty-eight, be deemed and construed to extend to all servants employed in
husbandry, though hired for a less time than one year; any thing in the
said recited act of the twentieth year of his present majesty's reign, or any
other act contained to the contrary notwithstanding.

Recited act
extended to
servants em-
ployed in
husbandry,
though hired
for a less time
than a year.

STAT. 3 Geo. 3, c. 8, [*A. D.* 1763, *intituled*] " An act to enable such
officers, mariners, and soldiers, as have been in the land or sea-service, or
in the marines, since the twenty-second year of his late majesty king *George*
the second, to exercise trades."

Preamble.

" Whereas there hath been, and are, divers officers, mariners, soldiers,
and marines, who have served his late majesty, or his present majesty, in
the late wars by sea and land, some of which are men that used trades,
others that were apprentices to trades, who had not served out their times,
and others, who by their own industry, have made themselves apt and fit
for trades: many of which, the wars being now ended, would willingly
employ themselves in those trades which they were formerly accustomed
to,

to,

to, or which they are apt or able to follow and make use of, for the getting their living by their own labour, but are or may be hindered from exercising those trades in certain cities and corporations, and other places within this kingdom, because of certain by-laws and customs of those places, and of the statute made in the fifth year of queen *Elizabeth*, prohibiting the use of certain trades by any person who hath not served as an apprentice to such trade for the space of seven years: for remedy whereof be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That all such officers, mariners, soldiers, and marines, who have been at any time employed in the service of his late majesty, or of his present majesty, since the twenty-ninth day of *November*, in the year of our Lord one thousand seven hundred and forty-eight, and have not since deserted the said service; and also the wives and children of such officers, mariners, soldiers, and marines; may set up and exercise such trades as they are apt and able for, in any town or place within the kingdoms of *Great Britain* and *Ireland*, without any let, suit, or molestation, of any person or persons whatsoever, for or by reason of the using of such trade; nor shall such officers, mariners, soldiers, or marines, or their wives or children, during the time they shall exercise such trades, be removeable from such respective place or places, to his, her, or their last legal place of settlement, by virtue of any law now in being relative to the settlement of the poor, until such person or persons shall become actually chargeable to such parish or place; and if any such officer or officers, mariner or mariners, soldier or soldiers, marine or marines, or the wife or child of any such officer, mariner, soldier, or marine, who shall be sued, impleaded, or indicted in any court whatsoever, within this kingdom, for using or exercising any such trades as aforesaid, then the said officer or officers, mariner or mariners, soldier or soldiers, marine or marines, or any wife or child of any such officer, mariner, soldier, or marine, making it appear to the same court where they are so sued, impleaded, or indicted, that they have served his late or present majesty as aforesaid, or that he, she or they, is or are the wife or wives, child or children, of such officer or officers, mariner or mariners, soldier or soldiers, marine or marines, who shall have so served his late or present majesty, shall, upon the general issue pleaded, be found not guilty in any plaint, bill, information or indictment exhibited against them; and such persons who notwithstanding this act, shall prosecute the said suit by bill, plaint, information or indictment, and shall have a verdict pass against him, or become nonsuit therein, or discontinue their said suit, such person or persons shall pay unto such officer or officers, mariner or mariners, soldier or soldiers, marine or marines, or the wife or child of such officer, mariner, soldier, or marine, respectively, double costs of suit, to be recovered as any other costs at common law may be recovered; and all judges and jurors before whom any such suit, information, or indictment shall be brought, and all other persons

Officers, mariners, soldiers and marines, who have been at any time employed in the king's service since 29 Nov. 1748 and have not since deserted, and also the wives and children of such, are authorized to set up and exercise trades within any part of Great Britain or Ireland, without let; and without being liable to be removed from thence to their last legal place of settlement, until they become actually chargeable to the parish; and if sued, upon leading the general issue, they shall be acquitted, and be paid double costs of suit.

persons whatsoever, are to take notice of this present act, and shall conform themselves thereto; any statute, law, ordinance, custom, or provision, to the contrary in any wise notwithstanding.

Where any two justices for the county or place were to take an oath, and to give evidence as to the place of their last legal settlement, they shall make oath accordingly; an attested copy whereof shall be given them, which shall be admitted as evidence at the quarter-sessions;

and if summoned again, they shall not be obliged to take a fresh oath, but produce the former, or leave a copy thereof.

Privileges of the two universities reserved.

Sec. 2. "And be it further enacted by the authority aforesaid, That it shall and may be lawful for any two or more justices of the peace for the county, town, or place, where any such officer, mariner, soldier, or marine, shall set up and exercise any trade as aforesaid, to cause such officer, mariner, soldier, or marine, to be summoned before them in the town or place where such officer, mariner, soldier, or marine, shall set up and exercise such trade as aforesaid, in order to make oath of the place of his last legal settlement (which oath the said justices are hereby impowered to administer) and such officer, mariner, soldier, or marine, are hereby directed to obey such summons, and to make oath accordingly; and such justices are hereby required to give an attested copy of such affidavit so made before them, to the person making the same, in order that he may produce it when required; which attested copy shall at any time be admitted as evidence as to such last legal settlement, before any of his majesty's justices of the peace at any general or quarter-sessions of the peace.

Sec. 3. "Provided always, That in case any such officer, mariner, soldier, or marine, shall again be summoned to make oath as aforesaid, then on such attested copy of the oath by him formerly taken being produced by him or by any other person on his behalf, such officer, mariner, soldier, or marine, shall not be obliged to take any other or further oath with regard to his legal settlement, but shall leave a copy of such attested copy of his examination, if required.

Sec. 4. "Provided always, That this act shall not in any wise be prejudicial to the privileges of the universities of *Cambridge* and *Oxford* or either of them; or extend to give liberty to any person to set up the trade of a vintner, or to sell any wine or other liquors within the said universities without licence first had and obtained from the vice chancellor of the same respectively."

Of the Appointment of Overseers.

No greater number than four overseers can be appointed. 1 Bur. rep. 445 to 453. Hist. Term 34 Geo. 2, Rex v. Loxdale and four others.

Mr. *Morton* had some time ago, (*viz.* on *Monday 17th November, 1755*) moved to quash an order of two justices appointing five overseers for the parish of *St. Chad* in *Shrewsbury*. His objection was that the justices have no power to exceed the number of four. Which objection was founded upon the words of 43 *Eliz. c. 2, §. 1.* See page 360. And he mentioned a former case of *Rex v. Harman*, upon the very same point, which depended in this court from *P. 12 G. 2, to M. 15 G. 2*, and at last was never determined; and also *Rex v. Besland, Hil. 19 Geo. 2, B. R.* which was the reverse of an excess of their jurisdiction, where the order, (being to appoint one overseer,) was confirmed. A rule was thereupon made, to shew cause. And after the point had been several times argued in *ld. ch. J. Ryder's* time, it came on to be argued once more, on the 27th of *January 1757*, before

lord

Lord Mansfield, he having never heard the former arguments. When the same things which had been so often said, were again repeated. On the side of the extension of the number of overseers, usage was alledged, and greatly relied upon. Note—The court misled by assertions that there had been a usage to appoint more overseers than four; for fear of inconvenience, had avoided determining the question in the case of the *King v. Harman*, after it had depended six years, in hopes that the legislature would make some provision for what was past, as well as for the future. And upon the same apprehension, the court had hitherto postponed the determination of this. Lord Mansfield said he had seen full notes of the former arguments of the present case; and also of the case of *Rex v. Harman*. He observed particularly what was said as to the usage in large parishes. And he therefore had directed inquiry to be made in many large parishes as to the fact whether there had been such usage, or not. And he ordered the return which had been made to him upon such inquiry, by the agents on both sides, to be read. From which, it appeared that in *St. James's Clerkenwell*, 4. In *St. Bridget's*, 3. In *St. Dunstan's*, 2. In *St. Clement's Danes*, 4. In *St. Paul's Covent Garden*, 2. In *St. George's Hanover Square*, 4. In *St. James's Westminster*, 4. In *St. Margaret's Westminster*, 2. In *St. Andrew's Holborn*, 8: (but that parish contains three separate divisions.) In *St. Giles's in the Fields*, 8; (though now only four are appointed by the justices, and act as assistants, unless eight voluntarily serve: but there were never less than eight before the case of *Rex v. Harman*.) In *St. Martin's in the Fields*, 5. (since the act of parliament lately made, which impowers them to appoint nine, if in the discretion of the justices it should be thought proper.) In *Shrewsbury*, (which contains five parishes;) in *St. Alsemond's*, 3. In *Holy Cross*, and *St. Giles's*, 4. In *St. Mary's*, 4. *St. Julian's*, 4. *St. Chad's*, 5, for one year only; and never exceeding four, but once, viz. this present year. After reading the report, lord Mansfield proceeded, the usage is, as it were, out of the case; or rather, it supposes that they cannot legally exceed four. Therefore, consequently, but little inconvenience can arise from determining the construction of the statute, according to it's natural import. As to legal constructions—The case of *Rex v. Harman* was never determined*, as to the order for the appointment of overseers. In the case of *Rex v. Besland*, where only one overseer was appointed, no opinion was given judicially, upon the point of law; nor was the appointment † quashed. So that the present case is a new original case: and it must be determined upon the 43 *Eliz. c. 2*; which is the foundation of the system of law concerning the poor. There is a known distinction between circumstances which are of the essence of a thing required to be done by an act of parliament, and clauses merely directory. The precise time, in many cases, is not of the essence. In the case of *Rex v. Sparrow*, 2 *Strange* 1123, the justices had been guilty of a neglect, in not appointing overseers within due time: and this court issued a *mandamus* to compel them to do it afterwards, for the sake of the poor. The poor could not have had a specific remedy, in that case; unless the justices might do it after the precise time, in obedience

* There was another order, adjudging Harman to have neglected the execution of his office; which was quashed in Mich. 13 G. 2
† It was confirmed, as to the necessity of appearing to be a bad order; for it might be, that others

were appointed by other orders.

dience to the *mandamus*. So, as to the justices in or near the parish or divisions, it is only directory. Justices of peace have no other power to appoint overseers but under the special authority given them by act of parliament. Therefore this special authority must be strictly pursued, and cannot be exceeded by them. The question here is upon the meaning and intention of the legislature, in this power given the justices to appoint overseers. Where there are different statutes *in pari materia*, though made at different times, or even expired and not referring to each other, they shall be taken and construed together, as one system, and as explanatory of each other. So, in the laws concerning church leases; and those concerning bankrupts. And so also I consider all the statutes providing for the poor, as one system relative to that subject. Now 39 *Eliz. c. 3*, is the first of these, and when first mentioned by my brother *Fester*, struck me strongly, with regard to the determination of the present question. That act lays, that the churchwardens and four substantial householders, &c. (without any latitude whatsoever, for a greater number.) And more than four could not have been appointed under it: for the number the legislature had named, could not be altered. That act of parliament of the 39 *Eliz.* was continued by the very act of 43 *Eliz. c. 2*, §. 18, till the following *Easter*, when that of 43 *Eliz. c. 2*, was to take place: so that the legislature had it before them, and even under particular consideration. And the act of 39 *Eliz.* is expressly fixed to four. Parishes were not then, so populous as they are now. And this act of 43 *Eliz. c. 2*, gives power to lessen the number to three or two according to the size of the parish: but they had no notion of extending it to a greater number. And there is some weight in the circumstance of the numbers descending from four downwards, and not ascending upwards. As to the argument which was drawn from 13, 14 *C. 2, c. 12*, §. 21. I think that statute ought to be taken into the consideration, in construing this of 43 *Eliz. c. 2*: but I do not see that this will help the case. For it is begging the question, to suppose that the justices may appoint more than four overseers of the poor, in townships and villages in those large parishes. It is expressly directed by that statute of 13, 14 *C. 2, c. 12*, §. 21, that such choice and appointment shall be, (and the construction of it must be guided according to its own reference,) according to the rules and directions mentioned in the statute of 43 *Eliz.* And neither any judicial determination, nor usage, support this conceit that they can appoint more than four in these townships and villages in the large parishes. That act of 13, 14 *C. 2*, was indeed rightly and reasonably extended to *Wales*. But no argument can be drawn from that latitude of construction: as both the words of it, (which name *Wales*,) and also the general intention of it, (*viz.* the care of the poor,) well justified such an extension. Then the act of parliament in 1740, relating to *St. Martin's* and the overseers of that parish, and which extends their number, shews the construction put by the legislature themselves upon the 43 *Eliz.* on this head; and excepts this very large parish of *St. Martin* out of it. And yet even this very act restrains the number to nine: which shews that the justices had no power

under the 43 *Eliz.* to appoint what number they pleased. For it would be a strange thing to limit the number, in a very large parish; and leave it at large, in smaller ones. There are two other acts of parliament, which have not been mentioned; and both of them passed after the case of *Rex v. Harman*, and after the case of *St. Clement's Danes*; viz. 17 *G. 2, c. 3*, and 17 *Geo. 2, c. 38*, both relating to overseers: and yet no extension of number, nor any variation therein. The precise number is not an immaterial thing; either to the officers of the parish, or to the persons for whom they are trustees. Upon themselves, 'tis a burden: which, by this practice, would come round the sooner. And in respect to the parish for whom they are trustees, a great number may not do business better than a smaller; and it would be attended with more expence. Also with regard to the church-wardens who are joined in authority with them—They are only two, or (by custom) four churchwardens in each parish. Therefore a greater number of overseers being appointed, necessarily alters the balance of the majority amongst them, and makes an essential difference in the proportion between one and the other. And there is no number to stop at, if the justices exceed four: they may go on, without any boundary, unless the specified number of four be the limit. Therefore I think this appointment of more than four is not warranted by the 43 *Eliz.* upon the true construction of that statute. Mr. Just. Dennison concurred in opinion, that this appointment ought to be quashed; and he did not think that this court ever had any doubt about the legal determination of this question. He then stated and expatiated upon the case of *Rex v. Harman*; and said the reason why the court did not quash that appointment was merely for the sake of the poor; and not from any doubt of the law. *Besland's* case was quite a different case from that of appointing a greater number than four. The point of the validity of an order appointing more than four, is a new case; but not a difficult one, at all. This act of 43 *Eliz.* is, as one may call it, the *Magna Charta* of the poor. And it can never be called directory as to the number of the overseers appointed by it. By 1 *Inst. 13. b.* it appears that there was only two escheators, in *England*, in ancient time: though more were made indeed by act of parliament (14 *E. 3, c. 8.*) So there can be but one chief justice, or chief prothonotary. *Jenkins, 142. Case 93.* So, in the constitution of the court of wards, where 32 *H. 8, c. 46*, enacts that there shall be two auditors of the court of wards, the king cannot make four. So is 11 *Co. 4, a. Auditor Curle's* case. Certainly, the legislature had the number which stood fixed by 39 *Eliz.* in their view and under their consideration, when they made the 43 *Eliz.* And can it be imagined that the justices have a jurisdiction to appoint more? Clearly, they have not. In the case of *Rex v. Sparrow*, (mentioned in 2 *Strange 1123*) the court took great care in their determination. And 13 & 14 *C. 2*, was there considered by *ld. ch. just. Lee*, as tied up to the rules and directions of 43 *Eliz.* And that *mandamus* was issued for the sake of the poor: and the court equitably and rightly held that when the justices had elapsed the time for appointing overseers, the court might oblige them to do it afterwards, as to the time, that being discretionary.

But nobody ever thought it discretionary as to the number. And there is no reason in the earth, for us to break the boundary, which is fixed. Therefore he was clear, to quash the present order for the appointment of five. Mr. Just. *Foster* declared the very same thing; and that he never had any doubt in point of law: his only doubt was in point of discretion; as he then supposed the usage to be otherwise than as it now appeared to be. When the statute of 43 *Eliz.* was made, there were very few large parishes in towns and cities: therefore at that time, the parliament thought four overseers sufficient. Under 39 *Eliz.* I take it, the justices could not have gone below four. For, it being a special power given by statute, must be strictly pursued. And therefore, in the 43 *Eliz.* the legislature, though they took the act of the 39th for their plan, and followed it in almost every instance; yet, seeing the inconvenience in small parishes, departed from it with regard to the number of overseers; which they reduced, at the discretion of the justices; but did not increase, in any event; probably because they thought four overseers, with the church-wardens, sufficient for the largest parish (as they certainly are,) though too many for the small ones. If it be now become convenient, the application must be to parliament. However, he declared that he did not think that business is best done by a multitude of hands: and in fact, where the number that are to do it is large, they always delegate the actual transaction of it to a few. It is not true, (what some people imagine) that the common law of *England* made no provision for the poor: the Mirror shews the contrary. How, indeed, it was done, does not appear. As to the case of *Rex v. Sparrow*, 43 *Eliz.* fixes a time to appoint overseers, with a penalty: but did not mean that the poor should lose the equity and benefit of the act, if the justices did not appoint within that time. No parish ever applied for a mandamus commanding the justices to appoint more than four. The general sense of mankind was against it. This is an authority founded upon a positive law; and therefore must be pursued. Mr. Just. *Wilnot* declared (as his brethren Mr. Just. *Denison* and Mr. Just. *Foster* had done) that he never had had the least doubt, but upon the apprehension of an usage of the large parishes, for many years back, to appoint more than four: but this apprehension is now vanished: and therefore the usage (as it now comes out) confirms the true construction of the act. The instances of greater numbers appear to be only three: and one of them (*St. Andrew's Holbourn*,) is considered as three villis, under 13 & 14 *C. 2*; and *St. Martin's* (another of them) is under a new act of parliament made on purpose. I think this order cannot be supported. There were provisions for the poor, as my brother *Foster* has observed, at common law: though it does not fully appear what they were. The first regular provision however, is by 39 *Eliz.* By this statute, and by 43 *Eliz.* the legislature add four overseers to the former parochial administration. And no one can doubt that the number is essential; and cannot, by the rule of law be exceeded. For powers given by a positive law, or even by deed, to certain numbers of persons can never be exceeded, in the article of number. On the other hand, if it had rested singly upon 39 *Eliz.* the

number four could not have been lessened. But then indeed the 43 *Eliz.* relaxes this precise number of four, as to small parishes; but still continues it, as to all greater. And where the makers of the act intend an indefinite number, they expressly say so. For the 19th section relating to the island of *Poulnes* converts the whole district into one parish, for this purpose; and directs an indefinite number of overseers for that place. Which clause alone would satisfy me, as to the sense of the legislature. And they might as easily have said, so many as should seem necessary, as precisely fix it to four; if they had meant it so. And it is (as has been observed) an office which is burdensome upon the persons appointed: and business is not better done by great numbers of men, than by a few. And the parish have as great security from four, as from more. Upon the whole, he entirely concurred, that the order could not be supported. Mr. *Norton* moved that the order might not be immediately quashed; because the overseers had laid out 500*l.* or 600*l.* under it; and therefore he proposed that the other side should consent to have one of the overseers left out of the order. The court thought it might be reasonable; and for this reason only, did not directly and immediately pronounce the rule to quash the order. But now, at a day so long subsequent, on Mr. *Morton's* motion for the judgment of the court; and Mr. *Norton*, not urging any further against it, (and acknowledging that he had spoken to his client) lord *Mansfield* said there must be an end of it some time or other, therefore let the rule be made absolute, to quash the appointment. Order quashed.

Mr *Gould* and Mr. *Willes* shewed cause against quashing an order of sessions, which (upon appeal to them, by Mr. *Gayer*,) discharged an order of two justices appointing *James Gayer*, Esq; and *Benjamin Cobley*, to be overseers of the parish of *Rockbear* in *Com. Devon*. Mr. *Gayer* alone appealed from this order of appointment; and the sessions discharged it, as to the appointment of Mr. *Gayer* only: [the words of the order are, It appearing unto this court, that, &c. and also, &c. and that, &c. This court doth therefore vacate and make void the said warrant, as to the said *J. Gayer*.] it appearing unto them that he had some years been, and was at the time of the nomination, and still at the time of making the sessions order, an acting justice of peace for the said county, residing within the said parish of *Rockbear*, and a substantial housekeeper there; and also a lieutenant of marines in his majesty's service, on half-pay; and that there are other sufficient substantial householders within the said parish, for the doing such office. The court therefore vacated and made void the said warrant, as to the said *James Gayer*. Mr. *Norton* had, on 13th November 1756, moved to quash this order of sessions: for that neither of these two reasons were sufficient to justify the sessions in quashing the order of two justices, whereby Mr. *Gayer* was legally and regularly appointed one of the overseers of the said parish. A rule was thereupon granted, to shew cause. On shewing cause, the counsel on both sides went (at large) into

A justice of peace, who was also a half-pay lieutenant of marines, appointed overseer of the parish where he resides and acts, but excused. 1 Bur. rep. 245 to 247. Hil. 30 Geo. 2, Rex v. *Gayer*, Esq.

a long argument, whether the reasons given were sufficient : particularly, whether the offices of justice of peace, and of overseer, were compatible ; and whether the objection could be removed by appointing a deputy-overseer ; if it could, then whether a justice of peace was liable to be appointed overseer, in order to his executing the office by deputy. Lord *Mansfield* said that the general questions concerning the incompatibility of offices, and the power of appointing deputies, are a large field indeed : but the present question seems to me to turn in a very narrow compass. The sessions, upon an appeal, have a right to exercise the same latitude of discretion, in judging who are fit to be nominated overseers, as the two justices had. They have given their opinion that Mr. *Gayer* was not a proper person to be appointed overseer. They are not obliged to give any reason for their opinion ; because the legislature has intrusted them, upon an appeal, with the power or authority of appointing overseers. If they had given no reason, their order had undoubtedly been good : we must have presumed that they acted upon proper grounds. It is true, that where the whole reason is set out, and is clearly wrong, we may and ought to quash an order manifestly made by mistake, upon an erroneous foundation. But then the bad reason given must appear to have been their only inducement. If there may have been other grounds, they should be presumed sufficient : and the order ought not to be set aside, because some of their reasons, unnecessarily given, appear to be bad. There was no necessity for appointing Mr. *Gayer* : the sessions state that there were other sufficient substantial householders within the said parish. They might think Mr. *Gayer*, under all the circumstances, improper unnecessarily to be appointed : his being an acting justice of peace residing within the parish, and a lieutenant of marines, might be two circumstances which weighed among others. But it don't follow, neither is it said, that they looked upon both or either of these reasons, as an exemption from being appointed, or a disability to serve the office of overseer ; and that they vacated the warrant of two justices as illegal upon that account. The execution of a discretionary power, where it is not necessary to give a reason, ought to be supported ; unless the whole reason is set out, and manifestly wrong. Here, the whole reason upon which the sessions acted, is not given. They say there were other persons, qualified. Supposing Mr. *Gayer* liable to serve the office, they might think him not so proper as many others. And therefore we are not obliged to say that the whole reason they went upon is bad ; allowing (for argument) that there arose no legal objection to the appointment of Mr. *Gayer* : which, I think, there is no occasion now to examine. Mr. Justice *Denison* concurred, they were not obliged to give any reason at all : and if it be only an imperfect one, we ought not to quash their orders. I remember a case, (*Rex. v. Spalding*, I think it was,) where the justices held a man settled in a parish, by reason of an apprenticeship ; not saying that he had served forty days in the parish, under it : yet the court would not intend that they did wrong. We will intend every thing in favour of the justices, in their orders,

orders. Now here, the reason does not appear to be a wrong reason: it is enough, that they judged him an improper person to be overseer. Mr. Just. Foster concurred. *Per cur.* unanimously order of sessions confirmed; order of two justices quashed.

Two justices removed *Edmund Walker* and *Elizabeth* his wife from *Dol-* Settlement
ham to *Denham*: and the sessions, upon an appeal, confirm the order. not gained in
The order of sessions states the case specially. *Edmund Walker* hired a an extra-paro-
house and farm of 10 l. a year and upwards in *Denham*, and lived therein chial place,
from the year 1725 to the year 1730, and was rated and paid to the poor's unless such
rates of the said parish: afterwards, he hired another house and farm in place comes
Southwold Park, of 150 l. a year, and lived there for several years. But under the no-
Southwold Park aforesaid is an extra-parochial place, consisting of two tion of a vill
houses, and about 300 acres of land only, belonging to and in the occu- or town.
pation of different persons, being in the whole of the value of near 300 l. 1 Burr. Settle-
a year. And it does not appear that within the said extra-parochial place ment cases,
there are or ever were any persons appointed to receive or provide for the 35. East. 8
poor happening therein. Upon deliberate hearing of counsel on either Geo. 2,
side, the sessions do, under the circumstances aforesaid, confirm the or- (Monday 12
der so made for removal as aforesaid. The counsel who moved to quash May 1735.)
these orders (Mr. *Strange*) said it was now established, that a person may Rex v. inha-
be removed to an extra-parochial place, which may be looked upon as bitants of
a township or vill, and has more houses than one; and that a mandamus Denham.
will lie, to appoint overseers for an extra-parochial place. To prove 2 Stran. 100 †
which, he cited the case of * *Dolting Stoke Lane* and *Brookham Lodge*, H. 2 Sess. Caf.
11 Ann. and † *Rex v. the inhabitants of Rufford*, P. 8 G. No. 171, and
Therefore the Cases in B. R.
last legal settlement of the paupers was at *Southwold Park*; not at *Denham*. 7, 8, 9, & 10
On the contrary, it was argued (by Mr. *Abney* and Mr. *Filmer*) that the G. 2, S. C.
general rule is, that persons cannot be sent to or from extra-parochial * See Fortes-
places. And there is no inconvenience in this doctrine: for as they are cue's Reports
not to take other's poor, so neither are others obliged to take theirs. 219. 2 Sillk.
Indeed if such extra-parochial place be so populous as to be looked upon 486. in the
as a town or vill, that may make a great difference. In the case of the margin, and
inhabitants of *Stoke Lane*, *Dolting*, and *Brookham Lodge*, the pauper was Foley's poor
sent to an extra-parochial place, called *Brookham Lodge*: and the order laws, p. 103.
was quashed, because the extra-parochial place did not come under the † Str. 512, &
notion of a township or village. The act of 13 & 14 C. 2, c. 12, † ex- 8 Mod. 39.
tends to all *England*, if the extra-parochial place can come under the no- † See sect. 21,
tion of a township or village; but not otherwise. A place consisting only 22, in p. 375.
of one house certainly does not. It ought, at least to consist of several
houses, to answer that idea in any degree. In the case of *Rex v. the in-*
habitants of Belvoir, M. 2, G. 2, B. R. there are two houses, the duke of
Rutland's (*Belvoir castle*) and an ale-house: but there were not, nor ever
had been, any officers there. And the order of removal thither was
quashed. In the case of *Rufford*, it appeared upon the allegation in the
mandamus, and was admitted by the return, that it was a vill, though
insisted

insisted to be extra parochial. And that vill might consist of 500 houses, possibly. But two houses only, are not sufficient to be considered as a vill. And unless an extra-parochial place be a township or village, it is not within 13 & 14 C. 2, c. 12. A town or village should, according to *Finch's* law, contain ten families. And by 1 *Mod.* 78, *Waldron's* case, it appears that a village is a district that has a petty constable over it. The definition in *Co. Litt.* 115, is this, *Villa est ex pluribus mansionibus vicinata, et collata ex pluribus vicinis*. This place, therefore, having only two houses in it, cannot be considered as a township or village. The counsel for quashing the orders (*Mr. Strange* and *Mr. Lloyd*) replied, that extra-parochial places may have officers appointed for them by mandamus. In the case of *Dolting* and *Stoke Lane* it was holden, that there must be more houses than one. It has been said, it was there holden that there must be several. But more than one are several. This present case answers the definition in *Co. Litt.* It is a vill consisting *ex pluribus mansionibus & vicinatis*: for it has two houses and 300 acres of land belonging to and in the occupation of different persons. If a town be decayed, it is still a town. And to prove that this shall be intended and taken to be a vill, they cited *Greene v. Proude*, 1 *Mod.* 117; and *Addison v. Sir John Ottway*, 1 *Mod.* 251. If this be not a vill, what is it? It must be either a vill, or part of another vill: (for parish is only an ecclesiastical division.) All *England* is divided into vills: and therefore this must be a vill or part of a vill, or else no part of *England*. In the case of *Belvoir*, there was a material fault. For it was directed, to the church-wardens and overseers of the parish or liberty of *Belvoir*: whereas it was particularly stated that there were none. Besides, the rule was made absolute without any defence made against it. Lord *Hardwicke*.—This is a new case: at least, it is so to me. Before the case of *Dolting* and *Stoke Lane*, it had been generally taken that there was no power lodged in the justices of peace to send paupers to extra-parochial places where there were no overseers of the poor: but in that case, all the court held that within 13 & 14 C. 2, c. 12, the court might oblige the justices to appoint overseers, where the place was such as might come under the notion of a village or township. Now that * clause was plainly intended for townships in the large northern parishes only; (and that appears by the recital part of the act:) but in the enacting part, the words towns, hamlets, and vills are mentioned at large. Whereupon the court did there construe the equity of it to be, that a settlement might be gained in such parishes at large; without confining it to those parishes only which were particularized in the recital. That alone was a very liberal construction of the act: but they thought it within the mischief provided against by the act, and reasonable. And I believe my lord chief justice *Parker's* words were, that a settlement might be gained in an extra-parochial place consisting of more houses than one: but then he went on—so as to come under the notion of a town or village. The substance of the opinion rested therefore upon this limitation of its amounting to the notion of a township or village. Now this place is called a park, and de-

scribed

* Sect. 21,
p. 375.

scribed as such. It is certainly very hard to define exactly what is a township or a village: it must be left to the judgment of the court, upon the circumstances of the case stated. By the 43 *Eliz. c. 2*, there must, in every place, be more overseers than one. And when there are only two houses in a place, must the whole parish be perpetual overseers? And in such a case there is no body over whom they are to have jurisdiction, or any body to chuse them, excepting themselves. Now really this place does not appear, to my satisfaction, to be a town or village. In the case of *Dolting* and *Stoke Lane*, the order was quashed because *Brookham Lodge* was holden by the court not to be a town or village; notwithstanding that the general law was there laid down as I have before mentioned. And here the place does not, in my opinion, come under the notion of a town or village: and the orders ought therefore to be affirmed. Mr. J. *Page* held that a single house, or two houses, cannot amount to the notion of a town or village. If the place had formerly consisted of more than two; or had been a town, and fallen to decay; it ought to have been so stated. However, if the houses were really and in fact decayed and gone, it would then cease to be a town or village. A town or village, in common parlance, is an aggregate number of houses. Therefore he concurred. Mr. J. *Probyn* was of the same opinion. The least division known in the old law is a tithing; which consisted of ten families. I should therefore think a vill must consist of at least as much as a tithing: it seems indeed to be something between a tithing and a town. Since there is no certain definition of a vill, why should we not fix it to the number of a tithing, at least? The 13 & 14 *C. 2, c. 12*, was, I believe, intended for the northern parishes: but it was at length construed to extend to all others in *England*, as coming under the same equity and reason. The limitation of the more houses than one, in the case of *Dolting*, is—so as to come under the notion of a township or village. Now if there are but two housekeepers, are these two people to choose themselves, and to be perpetual overseers? I think two houses are not within the rule, so as to come under the notion of a township or village. Mr. J. *Lee* was of the same opinion. It is now thoroughly settled, that the justices may appoint overseers in extra-parochial places. But it is upon the principle and foundation, that the extra-parochial place comes under the notion of a village or town. I think the notion of a village, according to the ancient law, is a tithing consisting of ten families: according to the modern notion, it is a place that has a civil officer called a constable. I think that it ought, at the least, to have the reputation of a vill or town. But this place is not stated to have had the reputation of a vill or town; but only to consist of two houses. Lord *Coke's* definition of a vill, *ex pluribus mansionibus vicinata*, must mean more than two houses. If they had applied for a mandamus to appoint overseers, the question would have come properly before the court upon the * return. But, * This did upon the present motion, it does not appear sufficiently to the court to happen afterwards, in M. be such a place as we can say is within the statute of 13 & 14 *C. 2*, for the paupers to be removed to as their last legal settlement. The counsel 1740, 14 G. 2, B. K. Rex for

v. Inhabitants of Welbeck, and in Tr. 1763, 3 G. 3, B. R. Rex v. Showler and Atter. for quashing the order would have had this case spoken to again. But lord *Hardwicke* said, he did not see how it was possible, upon this state of the case, that the court could take this place to be a township or village. He said he was satisfied that the justices have done right: and it falls exactly within the reason of the case of *Belvoir Castle*. *Per cur.* unanimously—The rule was discharged; and both orders affirmed.

Settlement not gained in an extra-parochial place unless it be a town or village; and to constitute a village there must be a constable or tithingman. 1 Bur. Sett. Ca. 101. East. 10 Geo. 2. Wednesday, 11 May, 1737. Rex v. Inhabitants of the manor of Grafton. 2 Strar. 2 Sess. Ca. No. 152. S. C.

Two justices made an order for the removal of *Elizabeth Laughter* from *Stoke-Prior* to the manor of *Grafton*: and upon an appeal, the sessions confirmed that order. The case stated was—That the said manor of *Grafton* is an extra-parochial place, and formerly a feat of the Earls of *Shrewsbury*, then consisting of a capital messuage and three keepers lodges in the park adjoining; and that the park is since converted into farms; and that there are now five dwelling-houses and farms within the said manor (including the said old lodges) and now occupied by five several tenants. That the said pauper was hired for a year and served a year within the said manor; and hath not since gained any settlement elsewhere: and being likely to become chargeable to the parish of *Stoke-Prior*, the said two justices, upon complaint thereof to them made by the church wardens and overseers of the poor of the parish of *Stoke-Prior*, did, on the tenth day of *August* last, by an instrument in writing under their hands and seals, appoint *John Webb*, gent. an inhabitant within the said manor, overseer of the poor within the said manor; and the pauper was removed to him by virtue of the afore-said order. That there never was any overseer of the poor or any other officer within the said manor, till the said *John Webb* was appointed overseer as aforesaid; or any poor person, within the memory of man, before removed to or from the said manor. And it being the opinion of this court (of sessions, that the said manor of *Grafton* is now a village, and that the inhabitants thereof ought to maintain their own poor, this court (the sessions) doth therefore, in consideration of the whole matter, confirm the said order, &c. On a motion to quash these orders (*Wednesday 27th April 1737*.) the question was, whether *Grafton* be a township or village within 13 & 14 C. 2, c. 12, *sect.* 21. Mr. Serjeant *Parker*, who moved to quash these orders, cited the case of *Dalbam* and *Drenbam*, (the preceding case) and insisted that it was not a township or village: for, there must be a constable or tithingman, in order to constitute a village; whereas here they have never had any officer at all. A rule was then made to shew cause why the orders should not be quashed: and now, upon the motion of Sir *John Strange*, it was made absolute, without defence. See the preceding case, and the cases there referred to.

The general duty of the overseers, when appointed, is described by Stat. 43 El. c. 2, sect. 2, 6, 11. (See page 360, 363) and by Stat. 17 Geo. 2, c. 38, sect. 1, 11, 13. See page 396, 399.

Mr. *Burrow*, in an advertisement prefixed to the 1st. vol. of his *Settlement-Cases*, observes, that “The constant rule of intitling sessions-cases, when

when original orders of removal, and orders of sessions discharging or confirming them, are returned up into this court on writs of *certiorari*, is as follows. The king is named as prosecutor; and the inhabitants of the parish charged with the paupers by the order of sessions, and thereupon applying for the *certiorari* to remove the orders into this court, are named as defendants. But these cases are never intitled in the manner that very many of them are reported and cited in the common printed books, viz. "The parish of *A*. against the parish of *B*:" nor can they be found in the rule-books of the crown-office, under any such title. Whenever such a case is searched for in that office, it is necessary that the inhabitants of the parish last charged with the paupers by the sessions be considered as defendants, at the prosecution of the king. For example—Two justices remove *M. B.* from *Stroude* to *Lidney*: *Lidney* appeals to the sessions. If the sessions confirm the order, then *Lidney*, standing charged with the pauper by the order of sessions, brings the *certiorari*; and the title of the cause is "The king against the inhabitants of *Lidney*:" but if the sessions had quashed the order of the two justices, then the parish of *Stroude* would have been charged with the pauper, by the determination of the sessions; and in that case, the title must have been "The king against the inhabitants of *Stroude*." Thus far Mr. Burrow; whose method of intitling the cases, is adopted, and followed in this title.

Settlement by Apprenticeship.

On Wednesday the 20th instant a motion was made to quash an order of Settlement sessions, confirming an order of two justices made for the removal of *Alice Wheeler* from the parish of St. James Westminster to the parish of St. George by a parish-*may be gained*
Hanover Square; and also to quash the said original order. The case stated apprentice hired out by
by the sessions for the opinion of this court, was, That this *Alice Wheeler*, the first master,
a parish child, was, by the church-wardens and overseers, with the assent by 40 days re-
of two justices, bound apprentice, by indenture, to *George Leicester* of the sidence with
parish of St. George Hanover Square; where she served forty days, and the second
gained a settlement. Afterwards, and during her apprenticeship, she was, master. 1 Burr.
by parol agreement, hired out by her master to *John Hall*, in the parish of Sett. Ca. 12,
St. Mary le Bon; where she resided and worked above forty days, (to wit Mich. 8 Geo.
for the space of one year and upwards,) the said apprenticeship continu- 2. (Thursday
ing: during which time, her master *George Leicester* received her wages, 28th Nov.
and found her in cloaths. The sessions held her settlement to be in the 1734) Rex v.
parish of St. George Hanover Square: and therefore disallowed the appeal, Inhabitants of
and confirmed the order of the two justices. The question was, whether St. George
her serving above forty days in the parish of St. Mary le Bon, with the Hanover-
consent and approbation of her master, did not gain her a settlement in Square. 2 Sess.
that parish. The counsel for the motion (who were for the parish of St. Ca. No. 138.
George Hanover Square) argued that it did. And they cited the case be- 2 Stran. 1001.
tween the parishes of *Castor* and *Aicles*, in 1 Salk. 68, as directly in point: S. C.
also, the case of *Allhallows on the Wall* and *St. Olave's in Southwark*, in 1
Strange 554, and the case there cited, between the parishes of *Holy Trinity*
and *Shoreditch*, reported in 1 *Strange* 10. But the counsel who shewed
Vol. III. N° LXXXIII. 3 H cause

cause against quashing these two orders, argued on behalf of the parish of *St. Mary le Bon*) that this subsequent parol agreement cannot refer to the first agreement, so as that the service under it shall be construed to be a service under the original agreement which was by indenture. It is true an assignment by deed might have this effect: (1 *Salk.* 68. *Keb.* 304, &c.) But it was a great while before even an assignment by deed was held good. But a parol agreement must be entirely void, as to the purpose of gaining a settlement: for, the agreement being void, the service must be void. It was said, in the case of *Rex v. inhabitants of Buckingham*, p. 10 G. 1. B.

2 Lord Raym,
1352. 1 Stra.
582. S. C.

R. that where one is bound by indenture, such indenture cannot be discharged but by deed or by the sessions: and a parol agreement is of no avail, whilst the indenture subsists. Therefore the settlement of the apprentice is in the first parish, and not in the second. The service in *St. Mary le Bon* is to be considered as a service to the first master, under these subsisting indentures: and consequently the settlement will be in the parish where the indenture was made. In the case last mentioned; the first master was held to be intitled to the wages; which is the reason of that case.

1 Stra. 90,
92.

Now here the master is stated to have received the wages. In the case of *Rex v. inhabitants of Ivinghoe*, P. 4 G. 1, the court considered the service of the shepherd, who was hired by *Knight* for a year, and, on *Knight's* quitting the farm to *Smith*, served out the year with *Smith*, as a service to the first master, and as being only lent out by him to the second; and so to have gained a settlement under the first hiring. So here, it is only a lending, by *Leicester*, of his apprentice, to *Hall*: and the settlement follows the indenture. The case of the *Holy Trinity v. St. Leonard's Shore-ditch*, in M. 3 G. 1, materially differs from this case. There, *Ferris* was bound to *Truby*, with intent that he should serve *Green*; which he did for three years. The court held this to be the same as a turning over; and that *Truby* was only a trustee; and therefore they held it to be a settlement in *Green's* parish. But there it was stated upon the order, that there never was any service or intent to serve *Truby*. So in the case between the parishes of *Allhallows on the Wall* and *St. Olave Southwark*, the original agreement was, to serve the other master. On the contrary, in support of the motion, it was argued, on behalf of the parish of *St. George Hanover Square*, that she was hired out by her master to *John Hall* of *St. Mary le Bon*, and served a year to *Hall*. And although a parol agreement does not destroy an indenture; yet this agreement amounts to a contract: and it proves that the service to *Hall* was with the consent of the master. So that the case of *Castor v. Eccles*, in *Salk.* 68, is directly in point for us. So also is *Allhallows on the Wall v. St. Olave Southwark*: for there the apprentice was assigned over by parol, the indenture subsisting; and it was held a settlement in the second parish, where the service was performed. In the case of the king against the inhabitants of *Buckington*, the apprentice served his master half a year in *Buckington*, and his master became a bankrupt: then he hired himself, without his master's consent, in *St. Michael's Sebrington*, for a year, and served; and the master afterward delivered up his part of the indenture to the apprentice. The court held this settlement to be in *Buckington*. But the reason they gave was, because there

1 Sir. J. S.
554.

was no consent of the master: and they added, that if he had let himself to *J. N.* who lived in *St. Michael's Seabington*, with his master's consent, his service would have made a settlement. The case of the *Holy Trinity v. St. Leonard's Shoreditch*, is for us. The court will not take notice of a trust. There is no difference between an hired servant and an apprentice; but that the apprentice must be bound by indenture; and that the hired servant must be hired for a year, and serve for a year: but in the other case (that of an apprentice) the last forty days residence and lodging gains a settlement. In this case, *Alice Wheeler* continued the servant of the first master all the time; and the first master found her cloaths and received her wages: but the last forty days service and residence being in *St. Mary le Bon*, she must be settled there. 2 *Salk.* 533, between *St. Bride's* and *St. Saviour's* parishes *H. 4 Ann. B. R.* The apprentice's settlement does not depend upon the master, or upon the place where the indentures were made; but upon the place where the apprentice serves and resides the last forty days. The settlement is in the parish where the apprentice lodges. *Rex v. inhabitants of St. Mary Colechurch. Tr. 3 G. Lord Hardwicke.* My doubt is upon the stating of the order: it does not seem to me to be fully stated. Taking this as the general proposition—That an apprentice is bound to a master who may dispose of him; and he hires him out as a servant, for a year; and he thereupon serves forty days: I think it is a settlement, within 3 & 4 *W. & M. c. 11.* For this is a lawful hiring, because the master has the power to hire him out. Therefore if it rested upon this only, I should think it a settlement in *St. Mary le Bon*. But my doubt is, whether this was a lawful hiring. For the child is stated to be bound apprentice by the parish-officers by assent of the justices of peace. Now the master does not treat her as an apprentice, but hires her out. Now if the justice had a power to take back this apprentice, then it will not be a lawful hiring for a year. I have no doubt how the settlement would be, where a master has an absolute power over his apprentice: but I cannot take it, upon this order, to be an assignment of the apprentice. *Mr. J. Page* was under the same doubt. Besides, the time not being out, if the child comes back again after the lending for a year, and continues forty days with the master, I should very much doubt whether this would not quite turn the matter back again, and make a subsequent settlement in the first master's parish. *Mr. J. Probyn.* I apprehend that this indenture could not be discharged by parol. If a returning to the master had appeared, it would have been gaining a new settlement. But my present thoughts are, that it is a good settlement in *St. Mary le Bon*; whether you take it as a hiring and service for a year, or whether you take it to be a service of the first master. Here is a consent of the master and apprentice: and therefore it is a good hiring. An apprentice hiring himself without the consent of his master is certainly not good. My lord objects, that this is a binding by assent of the justices of peace: and if the justices have power to take the apprentice back from *Hall*, then it is not a lawful hiring of her to him for a year. But though the justices may set aside the indentures upon complaint, yet they cannot do it *ex officio*: and here neither side can com-

1 Stra. 528.

* 1 Salk. 68.

• See page
378.

plain; because there is a mutual consent. Then taking it to be a service of the first master—It is not necessary that the apprentice should serve in the same place where the master lives. The service gives the settlement, without any regard to the place where the master lives. The case of the *Oxford stage-coachman*, whose hostler served at *Chipping Wicomb*, was so determined. Now this is a good service in the parish where she last serves forty days: and therefore it is a good settlement in *St. Mary le Bon*. Mr. *J. Lee*. I incline strongly to think it a good service in *St. Mary le Bon*. It is the service and inhabitancy which makes the settlement. In the case of * *Castor v. Aicles*, the assignment was holden to amount to a contract between the two masters, though it was not considered as a strict assignment. It went upon the service and inhabitancy: and the poor child was holden to be settled at *Aicles*, where the second master lived. The other case of *Rex v. inhabitants of Buckingham* went upon the apprentice living at *St. Michael's Sebington* without the consent of the master; though the apprenticeship continued. But if it had been with his master's consent, the settlement would have been in *St. Michael's*. Here it is stated, that the apprenticeship was continuing: and the consent of the master is most manifest. If a man lets his apprentice do business in another parish, the apprentice, becoming a pauper, must be sent to the place where last legally settled for forty days. In this case she could not be removed from *St. Mary le Bon*: for here was a binding to her master *Leicester*, and a consent of the master; and she lived there in a state of inhabitancy, which was sufficient to gain a settlement, if continued for forty days. Lord *Hardwicke*. This is putting it upon a new point. I think there is a great doubt as to the lawful hiring. But upon the other point, it does seem indeed to be within the *8th section of the 3 & 4 of *W. & M. c. 11*. If the apprentice, by the consent and upon the business of the master, resides in a second parish, (and we must take this to be the business of the master, because he consented) she is irremovable; and therefore gains a settlement after forty days of such residence. In the case of an apprentice, it is not necessary that the binding and inhabitation should be in the same parish. The whole court concurring, finally, in the same opinion that the pauper was legally settled in *St. Mary le Bon*—the orders were quashed.

An apprentice
assigned by his
master's wi-
dow, thereby
gains a settle-
ment. 1 Bur.
Sett. Caf. 133.
Trin. 13 Geo.
2, 11 July,
1739) *Rex v.*
inhabitants of
East-Bridge-
ford. 2 Stran.
1115. 2 Sefs.
Ca. No. 151.
S. C.

Upon *Tuesday* 26th of *June* last, a motion was made to quash an order of sessions confirming an order of two justices made for the removal of *Thomas Alt* from *Orston* to *East-bridgesford* (both in *Nottinghamshire*.) The case stated upon the order of sessions was, that *Thomas Alt* the pauper was bound apprentice, by indentures dated 25th *May* 1727, to *William Henstons* of *Orston* aforesaid *Webster*, for nine years, and duly served him the first four years of the said term at *Orston*: and the said *William Henstons* then dying intestate and insolvent, his widow (without any administration taken, that appears to this court,) assigned him over to *Edward George* of *Staunton* in this county *Webster*, a certificate-man, for the remainder of the said term, in consideration of 3*l.* paid her by *George*; and, pursuant thereto, the said *Thomas Alt* lived with and served the said *George*, about a year and a half.

a half at *Staunton*; and then the said *George*, in consideration of 40 s. paid him by *Thomas Baggaley* of *East-Bridgeford* aforesaid *Webster*, did, with the consent of the said *Thomas Alt*, assign over the said *Alt*, by verbal agreement to the said *Thomas Baggaley* for the remainder of the said term of nine years; and accordingly the said *Thomas Alt* lived, and served out the remainder of the said term, with the said *T. Baggaley* at *East-Bridgeford*. But it does not appear to this court (the sessions) that the said *Henson's* widow was, at the time of the said second assignment, party or privy thereto: but about seven or eight months after, she was acquainted therewith, and very well approved it. And the court (of sessions) being of opinion that the said *Thomas Alt*, by virtue of the said assignment and service at *East-Bridgeford*, gained a settlement in *East-Bridgeford*, it is therefore ordered by the court that the said order or warrant of removal be, and the same is accordingly confirmed upon the said parish of *East-Bridgeford*. The objection to this order was, that the widow of the deceased master had no legal interest in his apprentice: she had not taken out any letters of administration, nor had any kind of authority to make such assignment. And consequently, the second assignment of him, made by her assignee, is totally invalid and nugatory. Upon shewing cause now, it was said that though the widow did not take out formal letters of administration, yet she appears to have been executor *de son tort*: and an executor *de son tort* may do legal acts. And an apprentice may gain a settlement under an assignment even by parol only. 1 *Salk.* 68. *Castor and Aicles*; and *P. 3 G. 2. B. R. Rex v. Barnes*. Moreover, this apprentice must be either under the power of the executor *de son tort*; or be *sui juris*. Now, if the former, the assignment is good: if the latter, then an agreement by a person *sui juris*, to serve for three years and a half will bind him. In reply, it was agreed that an apprentice may gain a settlement under even a parol assignment. But the master's widow is not here stated to be executor *de son tort*: and the court will not presume that she did a wrong. This might possibly be evidence of her being executor *de son tort*: but, at farthest, it is only evidence. The whole court were unanimous this was a good settlement in *East-Bridgeford*, where the apprentice lived above forty days with *Baggaley*: since, to this assignment, though only a verbal one, there was the consent of all the parties concerned; and he lived and inhabited at *East-Bridgeford* under the terms of the apprenticeship, as an apprentice bound according to the * act of parliament. They observed that * See page 378. an assignment of an apprentice is not considered as a strictly legal transaction; (because the person of a man is not strictly and legally assignable:) but it has been an equitable construction, that where an apprentice has lived forty days under an assignment, he shall thereby gain a settlement, because of the consent. The statute of 13 & 14 C. 2, cap. 12, sect. 1, requires the sending to the place where he lived as apprentice forty days. The act of 3 & 4 W. & M. cap 11, sect. 8, only requires a binding. *Per Cur.* Both the orders were affirmed.

Two justices made an order for the removal of *Ann Giles* from *St. Petrox* to *Stoke Fleming* (both in *Devonshire*;) and upon appeal, the sessions discharged.

An apprentice assigned by indorsement on the indenture, thereby gains a settlement. 1 Bur. Sett. Cal. 248. Trin. 19 Geo. 2. (June 21, 1745) Rex v. Inhabitants of St. Petrox, within the burrough of Clifton Dartmouth Hard-
m. 18.

charged that order. Special case—*Ann Giles* was, by indenture dated 5th Sept. 1733, by the then church-wardens and overseers of St. Saviour's within the burrough of *Clifton-Dartmouth-Hardness*, with the consent of two justices of peace for the said burrough of C. D. H. by 43 Eliz. bound apprentice to *Rebecca Gregory* of the said burrough widow, with her to serve, dwell and abide from the date thereof until she should have accomplished her full age of twenty-one years. She served the said *Rebecca* from that time, in St. *Petrox* aforesaid, until 17th July 1738: when the said *Rebecca Gregory*, by indorsement on such indenture, dated that day, delivered up the said indenture, together with all her right, interest and term of years then to come and unexpired, as expressed in such indenture, of the said apprentice, to *Philip Foale jun.* of *Stoke Fleming*. And the said *Ann Giles*, then of the age of fourteen years or thereabout, by indenture dated the same 17th of July 1738, did voluntarily bind herself apprentice to the said *Philip Foale* (who is still living) to learn housewifery business and such other business as he should have to do, and serve him after the manner of an apprentice from the date thereof until the first day of November 1744. And the said *Ann Giles* served the said *Philip Foale*, by the means aforesaid, as an apprentice, in *Stoke Fleming* aforesaid, for several years, and until about the first of January last; when she intruded into the parish of St. *Petrox*. And afterwards, to wit, on 9th of the same month of January last, the said indenture of the 5th September 1733 was, at the general quarter-sessions of the peace held in and for the said burrough of C. D. H. and parish of *Townstall*, by order of the said court, vacated and made void*. And the said *Ann Giles*, being then chargeable to the said parish of St. *Petrox*, was then after removed, by virtue of the said order, to *Stoke Fleming* aforesaid. The sessions, being of opinion that the said *Ann Giles* did not gain any settlement by such living under such indenture in *Stoke Fleming* aforesaid, doth vacate and make void the said order; and the same is, by their order, made null and void. On Thursday 31st January last, a motion was made by Mr. *Stracey*, to quash this order of sessions, and affirm the original order. The objection to the order of sessions was, that the first indenture was only voidable; not void. To prove this, the case of St. *Peter's* and St. *Nicholas's* in *Ipswich* in lord *Hardwick's* time, (herein after inserted) M. 10 G 2, B. R. was cited; where the indenture was only for four years, and yet the service under it was holden good; because the indenture was not absolutely void, but only voidable at the election of the parties. This is a case in point. Rule to shew cause. Mr. *Gundry* shewed cause; and argued that this *Ann Giles's* settlement was in St. *Petrox*. The question will not turn upon the first indenture's being only voidable, but not void: because, though that should be granted, yet the settlement was in St. *Petrox*. For, first, here was no regular assignment of this first indenture to *Philip Foale*, it being only delivered up, but not assigned: and the term was not expired when she bound herself to *Philip Foale*. Besides a contract to learn housewifery of a man is a contract that an infant cannot make; it being not for her benefit. However if she was legally bound to *Philip Foale*, he is obliged to maintain her.

* N. B. The fault of it was the binding this parish-girl till 21 absolutely without the alternative of time of marriage. See 43 Eliz. c. 2. f. 5, in page 361.

Per. All the service in *Stoke Fleming* is under the second indenture, which was void; because the first was subsisting when the second was made. And the vacating of the first indenture is not warranted by any law; for the only power that the justices have to discharge apprentices is under 5 *Eliz. c. 4, sect. 35*, and that must be done by four justices, and for causes therein mentioned. Besides, the quarter-sessions of the county have here no power to discharge; because, this being in a borough, it must by the express words of the act be done by the head officer and three of his brethren, &c. And lord chief justice *Lee* observed that the discharge must be under the hand and seal of the four justices. On the contrary it was urged by Mr. *Stracey*, that a parol assignment is sufficient. It is, at least, an assent: and if the service to *Philip Foale* was only by the assent of the first master, the settlement will be in *Stoke Fleming*, where the service was done. Whether *Foale* was obliged to maintain her or not; that was a matter to be disputed between him and the parish of *Stoke Fleming*: but *St. Petrox* had certainly a right to remove her thither. The court thought no stress was to be laid on the vacating the first indenture by the sessions; because it does not appear whether the circumstances which 5 *Eliz. c. 4, sect. 35*, requires were observed or not. And they thought it not void, for want of the alternative of marriage; though perhaps not obligatory upon the parties. And though an assignment of an apprentice (except in *London*, by custom) cannot strictly be made; yet as this assignment was with the assent of the mistress, the service under it will be good for the purpose of gaining a settlement: for the servitude continued under the first binding. And though in the *Ipswich* case the indenture was holden not to be binding as between the parties; yet it was holden to be neither void nor voidable by the parish as to the gaining a settlement. But even if there was no authority in the case, yet the indenture ought not to be considered as absolutely void, but only voidable: for it would be extremely hard that a poor child, who had served ten years under an indenture of apprenticeship, should lose the benefit of her settlement, because the justice's clerk who made the indenture happened to be either ignorant or negligent. *Per Cur.* unanimously—Rule made absolute, to quash the order of sessions, and affirm the order of the two justices.

Two justices made an order for the removal of *Michael Wilson*, *Margaret* his wife, and *Jane* their daughter from *Austwick* to *Clapham* (both in the west riding of *Yorkshire* :) and, upon appeal, the sessions confirmed that order. Case—The pauper was bound a parish-apprentice, by the assent of two justices of the peace, to one *Thomas Jackson* of *Austwick*, tenant to the rev. Mr. *Jackson* of *Clapham*, who had covenanted to indemnify his tenant against all parish charges. *Thomas Jackson* carried him to his landlord, together with the indenture, who accepted, received, and provided for him. He desired the mother to provide for the boy; who did so, for three years, in *Austwick*; and the rev. Mr. *Jackson* paid her 20s. a year. Then he lived with him in *Clapham* eight weeks; and then

An apprentice, being assigned from the first to a second, and from the second to a third master, without the assent of the first master, gains a settlement by 40 days residence with

run

that third master. 1 Bur. and the rev. Mr. Jackson consented to his being there. Then the pauper was placed with his brother, a mason in *Austwick*, as an apprentice, by the rev. Mr. Jackson, who gave him a new suit of cloaths: and he served his brother*, as an apprentice, a twelvemonth or two, in *Austwick*; who took him as an apprentice, and quitted the rev. Mr. Jackson of him. But the representatives of the first master (who was then dead) knew nothing of this, nor ever assented to it, nor any thing of his living with his mother. On Saturday 31 Jan. last, a motion was made by Mr. Poole and Sir John Strange, to quash these orders. They cited *Rex v. inhabitants of East Bridgeford* (the last case but one); and *Rex v. inhabitants of St. Petron* (the last case); and *St. George's Hanover-square* and *St. James's Westminster* (the last case but two.) Upon shewing cause now, it was insisted by Mr. Clayton, on behalf of the parish of *Austwick*, that this service of the third master in *Austwick* could not be considered as a service under an assignment; nor as a service under the indenture; for want of the consent of the first master. On the contrary, it was insisted by Sir John Strange and Mr. Poole, on behalf of the parish of *Clapham*, that this service must be considered as under the indenture; the first parol assignment being, to this purpose, good. *Wilson* was the legal apprentice of *Thomas Jackson*; and the equitable apprentice of the rev. Mr. Jackson: a legal assignment is not necessary. And this is a sufficient service under the first indenture. To this it was replied by Mr. Clayton, that he gained his last legal settlement at *Clapham*, by the eight weeks service. The agreement with the mason is not an assignment; but an attempt of a new binding, whilst the first indenture was subsisting: which, therefore, is not good. Lord Chief Justice Lee—The act* of parliament only requires a binding by indenture; and gives a settlement where the last forty days are served. Here is a binding by indenture; (though the term is not stated:) and the first master delivers over the apprentice and indenture to his landlord, who receives him. This, therefore, must be looked upon as receiving him under the terms of the indenture. If there had been no inhabitancy elsewhere, after the boy's living eight weeks with the rev. Mr. Jackson at *Clapham*, the settlement had been there. But a settlement is fixed at *Austwick*, by the boy's living there a quarter of a year, with the consent of his master. For this is living there under the original binding; as no dissent of the first master is stated. Then the agreement with the mason is not stated to be a new binding. The first master delivered over all his right and the indenture, to the rev. Mr. Jackson; and it is not necessary to state any assent from him. The case of *East Bridgeford* (the last but one) is in point. However, there is no ground for the distinction that a second master cannot assign to a third; that is, so far as to gain a settlement by the service under it. Mr. justice Denison concurred that the service to the mason was a service under the original binding; and that no actual consent of the first master was necessary. This has been called a new binding to the mason. But, neither could a new contract be made whilst

* See 3 & 4 W. & M. c. 11, s. 8. See page 378.

whilst the former subsisted, and the original one dissolved ; nor does such a thing seem to be intended. Therefore this is a service under the first binding : and the orders ought to be quashed. Mr. justice *Foster* was of the same opinion, that the orders ought to be quashed. *Per Cur.*—Both orders quashed.

Two justices for the county of *Devon* made an order for the removal of *Rosamond Cock*, *Elizabeth* his wife, *Elizabeth*, *Honor*, and *John* their children, from the parish of *Tavistock* in *Devonshire* to the parish of *Kelly* in the same county, as the place of their last legal settlement : but the last-mentioned parish appealing to the sessions, they quashed that order. The order of sessions states the case thus—The pauper was bound an apprentice, by the parish of *Lamerton*, to *Richard Rundle* ; with whom he lived several years in that parish ; and then *Rundle* transferred him, by assignment, to *John Prout* of the parish of *Milton-Abbot* ; with whom he lived till he was twenty years and a half old ; at which time, he offered his service to *Thomas Mason* of the parish of *Kelly*. The said *Mason*, apprehending that he was an apprentice to *Prout*, sent his two sons to the same *Prout*, to know whether it were with his consent that *Cock* the pauper should live with him. To which, *Prout* answered—with all his heart : he might live with *Mason* or any body else, provided he performed his agreement with him ; which was, to pay one guinea a year during the remainder of his apprenticeship. Accordingly, he lived with *Mason* in the said parish of *Kelly*, for a year and upwards. The court of sessions being of opinion that he gained no settlement thereby, did therefore vacate the said order of two justices, which removed the paupers from *Tavistock* to *Kelly*. A motion had been made on the second day of this term by Mr. *Heath*, to quash this order of sessions, and affirm the original order : and the court then gave him a rule to shew cause. Sir *Fletcher Norton* and Mr. *Thurlow*, on behalf of the parish of *Kelly*, now shewed cause why this order of sessions should not be quashed ; insisting that he did not gain a settlement in *Kelly*, for various reasons. 1st, He was a parish-apprentice, and an infant. Therefore he could not himself consent to be transferred. And yet he could not be transferred without both his own consent, and also that of the justices. 2dly, Neither, if he could, would it follow, that he could live in *Kelly* as an apprentice, without the privity of the first master, *Rundle*. 3dly, Nor does any certain and positive answer appear to have been returned even from *Prout* (his second master) to *Mason*. But admitting that *Prout* did consent, yet *Rundle's* concurrence was also necessary. And there is no consent at all from him, either express or implied, to *Cock's* serving *Mason* in the parish of *Kelly*. Therefore it cannot be implied that he acted as his apprentice in the service which he performed in the parish of *Kelly*. 4thly, He could not gain a settlement in *Kelly* by the method of a hiring and service ; because the indenture of apprenticeship continued : nor indeed is any hiring and service stated. So that that method of gaining a settlement is quite out of the

An apprentice being assigned from the first to a second, and from the second to a third master, gains a settlement ; and the consent of the second master includes that of the first.
2 Bur. Sett. Ca. 378.
Trin. 7 Geo. 3, (8 July 1767,) Rex v. inhabitants of Tavistock.

* The preceding case.

case. Perhaps the case of *Rex v. inhabitants of Clapham**, P. 20 G. 2, B. R. may be urged as an authority against us. But the present case differs from that. Here, the first master (*Rundle*) assigned him to *Prout* of *Milton Abbot* (who, in fact, was his father;) and then he lived with *Mason*, at *Kelly*. But he did not serve in *Kelly* with the consent of either *Rundle* or *Prout*. *Rundle* knew nothing of it: and *Prout* gave only a conditional assent. What is stated is only a proposition made on one side; and not accepted, not acceded to, on the other: here is no evidence that it was agreed to. It must be considered as rejected by *Prout*. Mr. *Dunning*, *contra*, (for the parish of *Tavistock*, and against the order of sessions.) An assignment, or a consent of an apprentice's master, is sufficient to gain a settlement in the parish where he serves under such consent. If *Prout*, the assignee assented, it will virtually include the assent of the first master. This is virtually an assent of both. It is totally immaterial whether the guinea a year was paid, or no. Lord *Mansfield* interrupted Mr. *Dunning*, and stopt him from proceeding any further; thinking it a clear case on his side. The only question is, whether *Prout* consented. It is clear that he did consent: and his consent included that of the first master. Mr. justice *Aston* concurred, and cited the case of *Rex v. inhabitants of East Bridgeford**, T. 13 G. 2, where a second assignment was holden good. Mr. just. *Vates* and Mr. just. *Hewitt* were of the same opinion with his lordship and Mr. justice *Aston*. *Per Cur.* unanimously—Rule made absolute. Order of sessions quashed: original order affirmed.

* The last but two.

Apprenticeship for four years only gains a settlement, notwithstanding
5 Eliz. c. 4.
sect. 4. 1 Bur.
Sett. Ca. 91.
Mich. 10 Geo.
2. (Nov. 23,
1736.) *Rex*
v. inhabitants
of *St. Nicholas*
in *Ipswich*.
2 Stran. 1066.
2 Sett. Ca.
No. 162, S.
C.

A motion was made on *Friday* the 6th of *February* last, to quash an order of sessions, which discharged an order of two justices made for the removal of *James Blyth* and *Margaret* his wife, and *Thomas*, *James* and *Mary* their children, from the parish of *St. Nicholas* within the borough of *Ipswich*, to *St. Peter's* in *Ipswich*. The case stated by the sessions was this—*James Blyth*, being under sixteen years of age, and unmarried, was bound apprentice to *J. B.* of *St. Peter's* in *Ipswich* aforesaid, cordwainer, by indenture and with the consent of his father, for the term of four years only; and dwelt with and served his master in *St. Peter's*, only the said four years. Whereupon the sessions being of opinion that the said binding and inhabiting pursuant thereto did not intitle the pauper to a settlement in *St. Peter's*, because he was not bound for seven years according to the statute in that case; they therefore discharge the order of the two justices. To this order of sessions it was objected, that the sessions had mistaken the law: for by the statute of 3 & 4 W. & M. c. 11, sect. 8. a binding for four years, or any other time under seven years, together with an inhabitaney for forty days, would gain a settlement. For, the words of that section are only these—if any person shall be bound an apprentice by indenture, and inhabit in any town or parish, such binding and inhabitation shall be adjudged a good settlement. And the case of *St. Bride's* and *St. Saviour's*, in 2 Salk. 533, was only a binding for four years. A rule was made to shew cause why it should not be quashed.

Upon

Upon arguing this case on the last day of the same *Hilary* term, the counsel for *St. Peter's*, in support of the order of sessions, insisted that this indenture was void to all intents and purposes, by 5 *Eliz. c. 4, sect. 41*, whereby it is enacted, that all indentures for taking any apprentices, otherwise to be made than by that statute is appointed, shall be clearly void in the law, to all intents and purposes. And it is appointed by the 26th section of the same statute, that persons dwelling in cities and towns corporate shall take apprentices for seven years at the least. Whereas this matter, dwelling in a town corporate has taken this apprentice only for four years. They said it was as much absolutely void as if the indenture had been unstamped: in which case it would be as no indenture or binding at all; because it was not stamped agreeable to 8 *Ann. sect. 39*. To prove this, they cited a case in *Pasch. 4 G. 2, 1731*, between the parishes of *Cuerden* and *Leyland*: (2 *Strange* 903, and 2 *Sessions Cases*, No. 134.) Adjourned. Upon *Saturday 3d July 1736*, the counsel for the parish of *St. Nicholas* moved to make the rule absolute. But lord *Hardwicke* intimating some doubt whether this case might not come within the cited case of *Cuerden* and *Leyland*; it was again adjourned. On the *Tuesday* following, this case was again argued. Lord *Hardwicke* observed, that as this is a very extensive question, it would be proper to consider maturely the act of 5 *Eliz.* For, if the court should make this strict construction of the 41st section, that every indenture of apprenticeship shall be absolutely void where every circumstance of the directions of that act is not exactly pursued, he was apprehensive that such construction would be attended with very great inconvenience, more than can easily be foreseen. And it might be doubted, he said, upon the 26th section, whether the words shall and may, there used, should be taken so strong as to make all other bindings void: or, whether that and the next following clauses were only inserted for the benefit of corporations. It was once more adjourned. Upon its being now again argued, the court gave their opinions at large. Lord *Hardwicke* said—this is a case of very great consequence, and of a very extensive nature: if this be a valid objection, that the indenture is void, it is very surprising that it has not been taken before now. But I do not find that it has been ever taken, with relation to a settlement. The exception to the present order of sessions is, that by the special state of the case it appears that the pauper was bound in the parish of *St. Peter*, within the borough of *Ipswich*, for the term of four years only: and upon that foot, (for all the other qualifications are taken for granted) the sessions have taken it up, and held it to be a bad settlement. The question is, whether an apprentice bound for less than seven years can gain a settlement. I am of opinion, that he may gain a settlement under such a binding; and therefore that this original order of the two justices is good, and the order of sessions consequently bad. The words of 5 *Eliz. c. 4*, are very strong. In *sect. 26*, they are these—that every person being an householder and twenty-four years old at the least, dwelling or inhabiting or which shall dwell and inhabit in any city or town corporate, and using

and exercising any art, mystery, or manual occupation there, shall and may, during the time that he shall so dwell or inhabit in any such city or town corporate, and use or exercise any such art or mystery or manual occupation; have and retain the son of any freeman not occupying husbandry, or being a labourer and inhabiting in the same or in any other city or town that now is or hereafter shall be and continue incorporate, to serve and be bound as an apprentice after the custom and order of the city of *London*, for seven years at the least; so as the term and years of such apprenticeship do not expire or determine afore such apprentice shall be of the age of twenty-four years at the least. Between this 26th section and the 41st, there are a great many regulations concerning the persons who are to take an apprentice, and who are to be bound apprentices. Then comes section 41st, which says, that all indentures, covenants, promises and bargains of or for the having, taking or keeping of any apprentice, otherwise hereafter to be made or taken than is by this statute limited, ordained and appointed, shall be clearly void in the law to all intents and purposes; and that every person that shall from henceforth take or newly retain any apprentice contrary to the tenor and true meaning of this act, shall forfeit and lose for every apprentice so by him taken, the sum of ten pounds. The question therefore turns upon this 41st section taken together with the 26th. And it is to be enquired—1st, whether this 41st section has a relation to and runs over all the several clauses of the act, so as to reach the 26th section. 2dly, If it does, then whether it makes such an indenture void; or whether it makes it voidable only. First, I do not see but that it does run over the several clauses of the act, so as to reach the 26th clause. Secondly, But I am of opinion that it does not make this indenture void; but only voidable, if the parties themselves think fit to take advantage of it. There are many cases where though according to the strict words a thing is made void, yet such thing is held not to be absolutely void, but only voidable. One instance of this is the statute of *Westm.* 2, c. 1, relating to fines levied by tenant in tail. The act says that the fine shall be *ipso jure nullus*, (as strong an expression as can be thought of:) and yet it has been held that it shall not be absolutely void against the issue in tail; but only work a discontinuance and put him to his *formedon*, if he thinks fit to take advantage of it. In *Hob.* 166, in the case of *Winchcomb v. bishop of Winchester and Puleston*, several cases of this kind are collected: one of which is very material, *viz.* that a sheriff's bond against the statute of 23 *H.* 6, is made utterly void; and yet *non est factum* cannot be pleaded to it. That, is the case of a bond: this, of an indenture. Here is an indenture between the master and his apprentice to serve for four years: and the apprentice has actually served four years. It has had its effect between the parties: neither of them has thought fit to take advantage of any defect in it. The parish has had the benefit of this apprentice's service, (as far as the service of an apprentice is a benefit to a parish :) and yet the parishioners would make it void. This would, I think, be extremely hard. I will mention a case which was not mentioned

tioned at the bar: it is in 1 *Salk.* 68, *Barber v. Dennis*: but is more fully stated in 6 *Mod.* p. 69. The widow of a waterman, who (as was said) by the usage of waterman's hall may take an apprentice, had her apprentice taken from her and put on board a queen's ship, where he earned two tickets, which came to the defendant's hands; and for which, the mistress brought trover. It was agreed, the action would well lie, if the apprentice were a legal apprentice: for, his possession would be that of his master, and whatever he earns shall go to his master. But it was objected, that this supposed apprentice was no legal apprentice, if the indentures be not enrolled pursuant to the act of 5 *Eliz.* and if he were not a legal apprentice, the plaintiff had no title. But lord chief justice *Holt* said, he would understand him an apprentice or servant *de facto*, and that would suffice against them being wrong doers. In the report in *Salkeld*, the word servant is not mentioned. (And indeed an action could not have been brought for a servant's wages, either on board or elsewhere: for a master cannot bring an action for the wages of his servant; though for the wages of an apprentice he may; because the time of an apprentice is considered as the time of the master; and what is earned by the apprentice is considered as belonging to the master.) Now if the construction of this act had been so very strict as is contended for by the counsel who have argued in behalf of this order of sessions, such a construction would have avoided the apprenticeship, to the effect then in question: and the mistress could never have maintained that action. Therefore I am of opinion that this indenture is not void, so as to be liable to be taken advantage of by a third person; but voidable only, at the election of the parties, if they think fit to take advantage of it. And it would be extremely hard that all these indentures should be absolutely void for want of any single qualification required by this act. If the time of service was the only circumstance liable to this objection, I should not think it of so much consequence; (for, I believe, there are not many bindings for a less term than seven years:) but there are a vast many other qualifications that are mentioned in the act of 5 *Eliz.* which are all liable to the same objection. And if a binding for seven years be necessary, it follows, that if any one of these qualifications are wanting, the indenture will be in the very same case as if this circumstance of time was wanting: and if so, I question whether any one settlement under an indenture of apprenticeship has been gained for fifty years past. Therefore upon this argument, I am of opinion that the settlement is good, though the binding was only for four years. But then there comes the statute of 3 & 4 *W. & M. c. 11, s. 8*, which enacts, that if any person shall be bound an apprentice by indenture, and inhabit in any town or parish, such binding and inhabitation shall be adjudged a good settlement, though no such notice in writing be delivered and published as aforesaid: from whence it is inferred; that if there be no binding by 5 *Eliz.* then there is no settlement by 3 & 4 *W. & M.* But this act of king *William* and queen *Mary* takes it up as it finds it; and only intends that an apprentice should not be obliged to

give

give notice in writing. And the construction of both statutes must be the same. And though the notion of settlements of poor persons had not obtained at the time when the act of 5 *Eliz.* was made, as it has done since; yet it was a mistake of one of the counsel, to say, that the 33 *Eliz.* was the first act relating to the settlement of poor persons. For, 27 *H. 8.*, c. 25, (which is printed in *Rastall's* edition of the statutes at large,) establishes a settlement for such as had been born or dwelt three years in any parish: and there was a subsequent statute made in *Ed. 6.*'s time, [See 1 *Ed. 6.*, c. 3.] But indeed the present notions of settlements have taken their rise from 13 & 14 *C. 2.*, c. 12. The principal objection to this binding for four years only, was founded upon the determination of the court in the case of *Cuerden* and *Leyland*; where the indenture was holden to be absolutely void, for want of being stampd. And how to distinguish that case from this, is the difficulty: and, if there had been no other words in the act of 8 *Ann.* c. 9, than there are in this, the difficulty had been great enough. But that case materially differs from the present: for, in that case, there were not only the words—that all indentures whereupon the duty was unpaid, and all unstamped indentures, should be void; but the act of parliament went on further, and added these words—and not available in any court or place, or to any purpose whatsoever. [See 8 *Ann.* c. 9, *sect.* 39.] And there is a subsequent clause [See *sect.* 43.] which further enacts that no indenture required by that act to be stamped, shall be given or admitted in evidence in any suit to be brought by any of the parties thereunto, unless such party on whose behalf it shall be given or admitted in evidence, do first make oath that the whole sum really given with the apprentice, or contracted for, was truly inserted. So that in that case it was superadded; (1st,) that such indenture should not be available in any court or place: (2dly,) that it should not be given or admitted in evidence:—and yet the order made in that case was grounded upon the indenture which was not stampd, nor was the duty paid. Therefore the justices admitted a matter in evidence which they ought not to have done. And it has been holden that if the justices admit evidence which they ought not to admit, it is a sufficient reason for quashing their orders. And therefore that case of *Cuerden* and *Leyland* was properly determined; because the justices should not have admitted the evidence upon which they grounded their order. Therefore I am of opinion that the present indenture is not absolutely void, but only voidable (at most.) Consequently the order of sessions is bad, and ought to be quashed; and the first order affirmed. The other three judges concurred in opinion that this indenture was not absolutely void, but only voidable; and even that, at the election of the parties only, not by a third person: for, that this indenture could only be avoided by the master or servant, who were the parties to it; but not by the parish, who have had the benefit of the service of this apprentice. They added some instances to prove that where the strict words of statutes seem to make things nullities, yet they must be regularly avoided, before they shall be absolutely considered as such; particularly,

ticularly, where a previous sentence of excommunication is requisite; though a statute says, that the person shall be *ipso facto* excommunicate. And they thought it would be inconvenient to admit too rigid a construction of the 41st clause of the 5 *Eliz. c. 4*, which seemed to them to be a law more beneficial to corporations than to the public in general; and which had not been much regarded or favoured. *Per Cur*—The order of sessions must be quashed: and the order of the two justices confirmed.

Two justices made an order for the removal of *Christopher Myers* and *Martha* his wife, and *Robert, Mary and Elizabeth* their children from *Gainsborough* in *Lincolnshire* to *West-Stockwith*: and, upon an appeal, the sessions quashed that order. Special case stated—By indenture or writing indented, bearing date the first day of *June 1756*, the said *Christopher Myers*, (son of *Robert Myers* of *Epworth* in the said county of *Lincoln*) with the consent of his mother, did put himself apprentice to *Robert Bursall* of *West-Stockwith* aforesaid mariner, to learn his art and to serve him as an apprentice from the said first day of *June 1756*, for four years then next ensuing: and the said *Robert Bursall* did thereby covenant to pay yearly to the said apprentice, the first year 2*l.* the second year 3*l.* the third year 3*l.* 10*s.* and the fourth and last year 4*l.*; and to teach the said apprentice the art of a mariner; and to find him sufficient meat, drink, washing and lodging, and all other necessaries during the said term, (wearing apparel excepted.) The said *Christopher Myers* was then of the age of seventeen years. The said indenture was not inrolled in the town where the same apprentice was then inhabiting, or in the next town corporate to the habitation of such apprentice, pursuant to the statute of 5 *Eliz. c. 5*, or with the collector of the customs, pursuant to the statute of 2 & 3 *Ann. c. 6*. (See these acts under title **Apprentice**, page 89, 95.) The said *Christopher Myers* served the said *Robert Bursall* as his apprentice during three years and a quarter of the said term of four years: and then the said *Robert Bursall* sold his ship; and he and his said apprentice parted by consent. The said apprentice served his master mostly on board at sea; but inhabited in the parish of *West-Stockwith* aforesaid the first fourteen days or upwards, and so many days after, at many different times, as with the said fourteen days amounted to upwards of forty days in the whole, and in no other parish for forty days, during the said term. The sessions quashed the order, for the reason above stated; subject to the opinion of his majesty's court of king's bench, whether the said indentures, being for four years only, and not inrolled as above, be void, or not: and whether the inhabiting in *West-Stockwith* as aforesaid be such an inhabiting as will gain a settlement there. On *Wednesday 25th of November* last, Sir *Fletcher Norton* moved to quash this order of sessions and affirm the original order. 1st, For that the sessions were mistaken about 5 *Eliz. c. 5*, and also about 2 & 3 *Ann. c. 6*, neither of those acts making the indenture void, as he alleged. And 2dly, that the continuance for forty days needs not be successive: it is enough, if it be forty days in all. He had a rule to shew cause. Mr. Solicitor general *Dunning* now shewed cause against quashing the order of sessions, and consequently against a settle-

Apprentice-ship to a mariner for four years only, and the indenture not inrolled pursuant to 5 *Eliz. c. 5*, or 2 & 3 *Ann. c. 6*, gains a settlement. 2 *Bur. Set. Ca.* 586, *East.* 8 *Geo. 3.* (23 *April, 1768*) *Rex v. inhabitants of Gainsborough.*

a settlement being gained by this apprenticeship, in *Stockwith*. He did not pretend that the forty days service should be a continued service. But whether such a service as this is, shall gain a settlement, is a question: for this indenture has not the requisites made necessary by 5 *Eliz. c. 5, sect. 41*. And all other indentures are made void to all intents and purposes. He cited the case between the parishes of *Cuerden* and *Leyland*, in 2 *Str.* 903. *Sir Fletcher Norton—contra—*for quashing the order of sessions. 1st, As to its not being an indenture for seven years—I agree it to be voidable: but it is not absolutely void. 2d, That the inhabitancy was not forty days successively—It has been determined over and over, that an inhabitancy for forty days successively is not necessary. 3d, As to the inrollment—The act of 5 *Eliz. c. 5, sect. 12*, provides that masters and owners of vessels, &c. may take and keep apprentices, to be bound for ten years or under. And every such apprentice being above seven years of age, to be bound, &c. so that the same covenant or bond of apprenticeship be made by writing indented, and inrolled in the town where the same apprentice shall be then inhabiting, if it be a town-corporate, and if the town be not incorporate, then to be inrolled in the next town incorporate to the habitation of every such apprentice. Now the meaning of that provision (that apprentices so taken for ten years shall be, &c.—) is for the benefit of the apprentice: it is a check upon the master. And therefore the apprentice so bound a minor to a master of this sort shall not be in a worse condition than any other apprentice, only because he is bound to a mariner. But there is no such provision in the act of 5 *Eliz.* chapter five, as Mr. Solicitor General cites from section 41, of that act. It is only in 5 *Eliz. c. 4*, and not in 5 *Eliz. c. 5*; upon which latter act, (of 5 *Eliz. c. five*) this case depends. Lord *Mansfield*—Then there is nothing in the case. The justices have done wrong. It would be very hard that the apprentice should suffer for the master's neglect. I think the cases have gone too far upon the stamp act: it is *summum jus*; and has been considered strictly on account of the preservation of the duties payable to the crown. Therefore the rule must be made absolute, for quashing the order of sessions. Order of sessions quashed: original order affirmed.

A sum agreed to be given to clothe a boy to make him fit to go out apprentice need not be inserted in the indentures. 1 Bur. Sett. Ca. 145. East. 13 Geo. 2. (May 17, 1740) Rex v. inhabitants of North-Owram, 2 Stran.

On Friday the 25th of January last, a motion was made by Sir Thomas Abney, to quash an order of sessions which discharged an order of two justices made for the removal of *Samuel Spencer* from *North-Owram* to the township of *Ovenden*, both in the west riding of *Yorkshire*. The case stated was thus—*S. Spencer* the father of *S. S.* the person removed, gained his last legal settlement in *Ovenden*; and during such settlement had a son born there, named *Samuel*, being the person removed. And afterwards, about the year 1729, the mother of the said *S. S.* (whose father was then dead) proposed to put him an apprentice to *A. Scot*, then an inhabitant in *North-Owram*, who refused to take him, because he wanted cloaths; but proposed to take him, if they would clothe him, or give him money to clothe him withal. The grandfather said he would do so: and it was thereupon agreed, that the grandfather should pay 30 s. to the master to clothe

clothe the boy withal; and that the master should take him as an apprentice. And in pursuance of that agreement, the master did lay out 30 s. in cloathing for the boy. And afterwards an indenture was drawn and executed by the said *A. Scot* the master, and *S. S.* the apprentice: and the 30 s. agreed to be given and laid out as aforesaid was paid by the grandfather to the said master. And in consequence thereof, the said apprentice served his said master under such indenture and agreement for six years in *North-Owram*. And in the said indenture a covenant was made and mentioned, for the said master to find cloaths for the said apprentice during all the said term; but in the said indenture no mention was made of the said sum of 30 s. so agreed to be given as aforesaid; neither was any duty paid for the same; nor was the said indenture stamp according to the statute of queen *Anne. c. 9 sect. 39.* (See title **Apprentices**, page 103) Therefore upon consideration had of the premisses, the sessions adjudged the place of the last legal settlement of the said *Samuel Spencer* to be at *North-Owram*; and do thereupon discharge the said order of removal. Two exceptions were taken by *Sir Thomas Abney* to this order of sessions: 1st, That the sum given with him as an apprentice is not inserted in the indenture, in words at length; 2^dy. That the indenture is not stamp. In support of this latter objection, he cited the case of *Cuerden* and *Leyland* (cited in the last case but one.) A rule was made to shew cause why the order of session should not be quashed. On the last day of last term, a motion was made to enlarge this rule; and for a rule upon the clerk of the peace, to shew cause why he should not amend the return to the *certiorari* at his own expence; he having neglected and refused to return up the original order: which rule was accordingly granted. Lord chief justice *Lee* said, the same was done in the case of one *Lodge*, clerk of the peace for *Norwich*. On the second day of the present term, this rule on the clerk of the peace was made absolute, without defence; and the principal rule was enlarged. Mr. *Strange*, solicitor general, now shewed cause why the order of sessions should not be quashed. He allowed the case of *Cuerden* and *Leyland*, where a sum of money was paid to the master as a *premium*. But this is no *premium* to the master, but advanced for clothing the boy; and by no means to be considered as within the act of 8 *Ann.* *Sir Thomas Abney*, on the other side, relied on the case of *Cuerden v. Leyland*, in support of the second exception; from which it appears, as he insisted, that the indenture ought to be stamp; or else it is absolutely void to all intents and purposes whatsoever. He also excepted to the caption; for that it is not said before whom the original sessions were holden; but only before whom the adjourned sessions were holden: Lord chief justice *Lee* said, the only question was, whether this 30 s. be such a sum as ought to be inserted in the indenture, by the statute of 8 queen *Ann. c. 9.* In the case of *Cuerden* and *Leyland*, the court held themselves bound to consider the service and binding as ineffectual and absolutely void to all intents and purposes, because the indenture was not stamp: but the not inserting in words at length the full sum received, or directly or indirectly given, con-

trailed or agreed for, subjects the master or mistress to a forfeiture, but does not make the indenture void. However, upon the state of this case, the master is to be looked upon in no other condition than if he had been a stranger employed as an agent by the grandfather to clothe the boy: and the grandfather was obliged to repay him, and did repay him. This clothing was before the binding: so that it amounts to no more than putting a boy apprentice ready clothed. It is not a *premium* received by the master. The statute means money given directly or indirectly for the benefit of the master. But he has no benefit from this *30s.* He was not obliged to clothe the boy before he was his apprentice: and this agreement was executed before the indenture was sealed. As to the caption—it is at a general quarter-sessions, &c. holden at *N. &c.* and from thence continued by adjournment to such a time at such a place, before such and such justices. It is all connected and coupled together, and must be taken to be begun and continued before the same justices: we can't presume that they were different persons. The three other judges were of the same opinion, and gave the same reasons: which it is therefore unnecessary to repeat. *Per Cur.* The rule for quashing the order of sessions must be discharged. *N. B.* The court do not, in such a case as this, pronounce any reversal of the order of the two justices; because that consequently remains quashed, if the rule for quashing the order of sessions be discharged. Order of sessions affirmed.

Where the consideration money (which was only 6d.) was not inserted, the indenture was not void. 2 Bur. Sett. Ca. 379; Hil. 28 Geo. 2, Feb. 11, 1755) *Rex v. inhabitants of Yarmouth.*

Two justices made an order for the removal of *William Jackson*, *Martha* his wife, and *Sarah*, *Susannah*, and *William* their children, from *St. Margaret's* in *Norwich* to *Yarmouth*: and the sessions, upon appeal, confirmed that order. Case stated—The said *William Jackson* was bound, and duly served a seven years apprenticeship to *John Fisher, &c.* in *St. Julian's* in *Norwich*: but the said apprenticeship appearing, by the said indenture, to be in consideration of sixpence and which had been paid, with the said indenture, to the said *John Fisher* (the master;) for which no duty was proved to be paid, pursuant to the statute in such case made and provided; therefore the sessions confirm the said order of removal. On *Wednesday* 20th *Nov.* last, a motion was made by *Mr. Blencowe*, to quash these orders: for that although no duty was proved to be paid, and though the indenture of apprenticeship appeared not to be stampd; yet it was not void to all intents and purposes, within the act of parliament of 8 *Ann. c. 9, sess. 22 & 39.* (See vol. 1, page 101, 103) the consideration-money being so small as sixpence only. To prove this, he cited the case of *Baxter v. Fairlam*, *P. 19 G. 2, B. R.* where the same point came in question upon a demurrer; and it was unanimously resolved that the legislature did not intend that any duty should be paid for so small a sum; there being no coin in *England* so small as to pay it, nor any stamp for less than twenty shillings. Rule to shew cause. *Mr. Serjeant Prime*, who was to have shewn cause against the rule, said he was satisfied that the case of *Baxter v. Fairlam*, was in point against him: and therefore he did not think

think it right to give the court any trouble in it: Whereupon, *per cur.* rule made absolute. Both orders quashed.

Two justices removed *Thomas Sutton* and *Mary* his wife, and *Mary* their child, from *Dymchurch* to *Petham* (both in *Kent*;) and the sessions confirmed it. Case—*William Sutton*, the father of *Thomas Sutton*, being legally settled in *Petham*, removed with his family into the parish of *Lydd*, and dwelt there under a certificate from the parish of *Petham*; but never gained any settlement there or elsewhere, after his removal from *Petham*. During the time that *William Sutton* and his family dwelt in *Lydd* under the certificate, the said *Thomas Sutton* was born in *Lydd*. The said *Thomas Sutton*, not having gained any settlement in his own right, by indenture duly stampd, and executed, bearing date the 10th of *June* 1721, bound himself an apprentice for the term of seven years from the day of the date of the said indenture, unto *Thomas Mayborne*, a blacksmith, then residing in the parish of *Tenterden*. At the time of the said binding, and also during the whole time, the said *Thomas Sutton* lived with the said *Thomas Mayborne* as his apprentice under the said indenture: the said *Thomas Mayborne* was a certificate-person under a certificate from the parish of *Sellinge* to the parish of *Tenterden*. The said *Thomas Sutton* did dwell with and serve the said *Thomas Mayborne* in *Tenterden* as his apprentice under the said indenture, from the day of the date of the said indenture unto the 30th of *August* 1723: and on the said 30th of *August*, the said *Thomas Mayborne*, being then a certificate-person as aforesaid, by his deed-poll by him duly executed, did give, grant, assign and set over unto *John Sutton* of the said parish of *Lydd*, blacksmith, his right, title, term of years to come, claim, interest, service and demand whatsoever, which he the said *Thomas Mayborne* had in or to the said *Thomas Sutton* by virtue of the said indenture; the said *Thomas Mayborne* thereby granting unto the said *John Sutton* his full power and lawful authority for the having, keeping and enjoying his said apprentice the said *Thomas Sutton* for and during the said term of years then to come and unexpired. The said *Thomas Sutton* did consent to the said assignment, and did dwell with and serve the said *John Sutton* as his apprentice under the said deed-poll, in the said parish of *Lydd*, from the date of the said deed-poll, during the rest of the said term of seven years for which he was bound apprentice as aforesaid. That the said *John Sutton*, at the time of the execution of the said deed poll by the said *Thomas Mayborne*, and during all the time the said *Thomas Sutton* dwelt with and served him the said *John Sutton* as his apprentice under the said deed-poll, was a parishioner legally settled in the said parish of *Lydd*, and not a certificate person. Upon the expiration of the said term of seven years, the said *Thomas Sutton* went into and resided in *Dymchurch*; but never gained any settlement there: and being likely to become chargeable to *Dymchurch*, was (together with his wife and child) removed by the said order of two justices, from *Dymchurch* to *Petham* as the place of his last legal settlement. The said *Thomas Mayborne*, after the granting the said certificate by the parish of *Sellinge* to the parish of *Tenterden* for him the said *Thomas Mayborne*, never did any act to avoid the

Pauper bound apprentice to a certificate-person, and by him assigned to a third person, gains the assignee's settlement. 1 Bur. Sett. Ca. 154, Mich. 14 Geo. 2, (15 Nov. 1740) Rex v. inhabitants of Petham, 2 Stran. 1147. 2 Sels. Ca. No. 149.S.C.

said certificate. *Mary* the child of *Thomas Sutton*, at the time of making the said order of removal and of the said removal, was of the age of three months, and no more. Whereupon the sessions confirm the order of the two justices: On *Wednesday* the 11th of *June* last, a motion was made by *Sir John Strange*, to quash these orders. He insisted that the apprentice was settled in *Lydd*, and not in *Petham*; having been by his own consent assigned to an inhabitant of *Lydd*, and served him there six years under that assignment.—Rule to shew cause. Upon shewing cause now, the question was, whether the pauper gained a settlement in *Lydd*, by serving out his apprenticeship there under this assignment. It depended upon the construction of the statute of 12 *Ann. Stat.* 1, c. 18, s. 2, which, after reciting the *stat.* of 8 & 9 *W.* 3, c. 30, and the inconveniences to parishes from the apprentices and servants of certificate-men, enacts, that such apprentice by virtue of such apprenticeship or binding to such person shall not gain or be adjudged to have any settlement in such parish, township, or place, by reason of such apprenticeship or binding: but every such apprentice shall have his settlement in such parish, township, or place as if he or they had not been bound apprentice to such person as aforesaid. And it was very well argued by *Mr. Knowler*, in support of the orders; and *Sir John Strange* and *Mr. Hardres*, against them—Lord chief justice *Lee*. There is no doubt but that if the original binding had not been to a certificate-man, the service in *Lydd* under the assignment would have gained a settlement. This has been often determined. But the present question wholly depends on the construction that shall be put on 12 *Ann.* c. 18, before which statute the parish was obliged to receive a certificate-man; and it was found that an irremovable certificate-man brought hardships on parishes, by taking apprentices and servants; and therefore it enacts that such servants or apprentices shall not be settled in such parish wherein the certificate-man lived. It appears very strongly to my apprehension, that as the preamble and purview of the act relate only to the security of the parish where the certificate-man lived, it meant only to provide for the case of that parish, for whose benefit it was made. The construction put upon the word *such*, in the instances cited by the counsel for the orders, does not come up to this. That construction was agreeable to the intention of those statutes. As in case of certificate-men's gaining settlements; the court construes acts favourably for gaining settlements; and the relative *such* was construed accordingly. So on the other act of parliament, about gaining a settlement by service. If a person be hired for a year, and serves for a year, such service shall gain a settlement, though it be not an entire service under the very same hiring for a year. There must, however, be a hiring for a year: and if there be also a service for a year, it is sufficient; because it answers the credit given to the man by taking him into a service for a year; and also answers the benefit which the parish has received from his labour for a year. The end of this act seems fully answered, by securing the parish which is obliged to receive the certificate man: and there is no reason to extend it further. Therefore I think this man is settled at *Lydd*, under the assignment—The

three other judges concurred with the chief justice in opinion; and said that the grievance which subsisted before the act of 12 *Ann.* ought to be considered upon this question concerning the construction of it. And that grievance was the charge brought on parishes obliged to receive persons certificated from their own parish, by such certificate-men's taking apprentices and servants, and so bringing a burden upon them. This was the mischief intended to be remedied. But another parish was not within this grievance. Therefore the act had no occasion to provide for them. If the legislature had intended it, they might have made the binding void. But this it has not done; it only enervates it in one particular instance; viz. with regard to gaining a settlement in that parish: but with regard to a third parish it remains a good binding, as it was before the act. And, consequently, if it is a good binding, and if the apprenticeship is not void, the assignment over is as good as it was before at common law; and there is no difference whether he was a certificate-man or not. And no injury is done to the parish of *Lydd*: for the pauper comes into that parish under the assignment, just in the same manner as if he had come into it under an original binding. And they held that those acts of parliament ought to receive a liberal construction, in favour of settlements. Mr. justice *Chapple* observed that the words of the act of 12 *Ann.* that the apprentice shall have his settlement in such place as if he had not been bound, must be taken to relate to that parish only, where the certificate-man lived. *Per cur*—Rule made absolute. Both orders quashed.

Two justices made an order for the removal of *Milbourn, Amy*, his wife, *The son of a* *John, Ann, Mary, James, and Priscilla*, their children, from *Wincanton* *cert heate-* in *Somersetshire* to *Silton* in the same county: and, upon appeal, the sessions confirmed that order. The short state of the case was this—*Giles and Priscilla*, the father and mother of *John* the pauper, came to *Wincanton* *man may gain* with a certificate from *Silton*. *John Milbourn* was afterwards born in *Wincanton*; and was at twelve years of age bound out by the parish of *Silton* to *Michael Hannam* of *Horsington*, taylor, for eight years; and served *Ca. 269. Hil.* him there; and has gained no settlement since: and though the indentures were not stamped in time, yet they were duly stamped, &c. and the duty paid, by virtue of an act to enlarge the time for doing it. And the sessions held that *John Milbourn* did not gain a settlement in *Horsington* by his serving such apprenticeship there; and therefore confirmed the original order. Mr. *Gundry* and Mr. *Gould* moved, on *Friday 12th November* last, to quash these orders; and said this was a new question upon the certificate act—whether the son of a certificate-person, born in the parish to which his father came by certificate, and bound apprentice and serving an apprenticeship to a master in a third parish, gains a settlement in the third parish, by such apprenticeship. They cited the case between the parishes of *Thornford* and *Sherborne*, *P. 15 G. 2, B. R.* (herein after inserted) where Mr. justice *Denison* said there could be no doubt but that as to other parishes, the children of certificate-persons would not be under the restraint of the certificate; and all the rest of the court agreed with him. *21 Geo. 2. (9 Feb 1747) Rex v. inhabitants of Silton.*

him. So here, this pauper was a person at large, as to every other parish except *Wincanton*, to whom the certificate was directed and delivered. And they also argued from the case of the king against the inhabitants of *Petham* (the preceding case.) A rule was then made to shew cause; which was now made absolute, to quash both orders.

Two justices made an order for the removal of *John Thackrey*, *Margaret* his wife, and *John* his son (aged ten weeks) from the township of *High and Low Bishopside* to *Dacre cum Buerley* (both in the west riding of *Yorkshire*;) and the sessions, upon appeal, discharged that order. Special case—That *Jonathan Joy*, a taylor, being an inhabitant legally settled in *Menwith cum Darley*, went from thence, by a certificate, to *Reade*, in the township of *High and Low Bishopside*; where he resided for some years. That afterwards, about eighteen years ago, he the said *Jonathan Joy* purchased a freehold house, for the sum of 10l. in the township of *Dacre cum Buerley*: after which, he left *Bishopside*, and went to inhabit in *Dacre cum Buerley*; to which place he carried his said certificate, and delivered it to the proper officer there. That upon his going to *Dacre cum Buerley*, he inhabited, and still doth inhabit in his said house so purchased by him, as aforesaid: and in *February* 1744, *John Thackrey* the pauper was bound to him as an apprentice by indenture, for the term of seven years. That the said *Thackrey* performed his service under the said indenture with his said master; who, all the time, inhabited in his said house in the said township of *Dacre cum Buerley*. The sessions were of opinion that the pauper did not obtain a settlement by such his apprenticeship as aforesaid in the said township of *Dacre cum Buerley*: and therefore they discharge the said order of removal, and order the church-wardens and overseers of the poor of *High and Low Bishopside* to pay to the church-wardens and overseers of the poor of *Dacre cum Buerley*, 2l. 18s. 6d. for damages sustained in maintaining the parties removed, pending the said order of removal. On *Saturday* 25th of last *January* Mr. *Gould* moved to quash order of sessions, and affirm the original order. This case depends on the act of 8 & 9 W. 3, c. 30, and 12 Ann. stat. 1, c. 18, sect. 2. To shew that a certificate affects only the two parishes to and from which the certificated person comes, and not a third parish; and consequently that the apprentice did gain a settlement in *Dacre cum Buerley* by his serving such apprenticeship there, although his master came by certificate, from *Menwith cum Darley* to *Bishopside*—he cited the cases of *Rex v. inhabitants of Petham*, (see last but one) *M. 14 G. 2, B. R.* and *Rex v. inhabitants of Silton, H. 21 G. 2, B. R.* (the preceding case.) Rule to shew cause. On *Wednesday* last the 4th instant, Mr. *Norton* shewed cause against quashing the order of sessions; and, consequently, endeavoured to shew the pauper *John Thackrey's* settlement not to be in *Dacre cum Buerley*. He did not dispute Mr. *Gould's* cases: but he said they were not applicable to the present. He urged that under 8 & 9 W. 3, c. 30, a parish may give a general certificate, not addressed to any particular parish: and in such case, every parish to which such a pauper comes, will be bound to receive him. This is like the case

of St. Nicholas in Harwich and Woolverstone. See 2 Sir J. S. 1163, (herein after mentioned.) The certificate was holden to be general; and to bind the parish who had acknowledged the pauper. 2 Salk. 535. Honiton and St. Mary Axe: a certificate concludes the parish that gives it, as to all the world. Mr. Gould *contra*. The only question is whether the master is to be considered as residing in *Dacre cum Buerley* under the certificate; or, whether the certificate was (if I may so express it) *functus officio*, by its being delivered to the parish of *Bishopside*; and was, after that, no more than waste-paper. He said that Mr. Norton's doctrine would establish the paupers to be vagrants all over the kingdom: and his cases prove no more than that the parish who gave the certificate are estopped from saying that the pauper does not belong to them; and it was so determined in the case of *Uttoxeter* and *Sudbury* (herein after inserted.) But a certificate does not preclude the certificated person from gaining a settlement by any proper act: he may do this, notwithstanding the certificate. The certificate is, in the present case, satisfied, and is no more in force. A certificate ought to be deposited with the first parish to which the pauper comes, from the parish who gives it. *Cur. Advis'*. Lord chief justice Ryder now delivered the resolution of the court. This case depends upon a very general question; viz., whether an apprenticeship to a certificate-man, in a third parish to which the master's certificate was not directed, will gain a settlement to the apprentice in such third parish. Now the apprentice certainly did gain a settlement by being bound an apprentice and inhabiting as such, by the 3 & 4 W. & M. c. 11, *sect.* 8; unless either the act of 9 & 10 W. 3, c. 11, or that of 12 Ann. stat. 1, c. 18, prevents it. But neither of these acts extend to this case: (which he shewed by reciting them.) See 9 & 10 W. 3, c. 11, and 12 Ann. stat. 1, c. 18, *sect.* 2, in page 383, 384. It is said that the certificate binds the parish giving it, against all the world. But by 8 & 9 W. 3, c. 30, *sect.* 1, the certificate is to bind the parish giving it, when and not before the person mentioned in the certificate shall happen to become chargeable to the parish to which such certificate was given: and then and not before, it shall be lawful for the certificated-person (if he has not otherwise acquired a legal settlement there) to be removed back. But this act of 8 & 9 W. 3, c. 30, does not give this right of removal to any third parish: it relates only to the parish, township, or place to which the certificate was given. Therefore no third parish has a right to claim that benefit from the provisions of it, which was only intended to extend to that single parish to which the paupers came certificated, from that wherein they were settled. But it is said that this certificate was delivered by Joy, the master, to the officers of the parish of *Dacre cum Buerley*, at the time when he came to inhabit there: and it is expressly stated that he carried it, and delivered it to the proper officer there. But that was neither necessary nor proper: and indeed it ought to have been left with the officers of the parish of *Bishopside*. It is not directed to the officers of *Dacre cum Buerley*; nor sent to them by those of *Menwith cum Darley*. Besides, the man mentioned in the certificate had a right to come to the parish

parish of *Dacre cum Buerley*, without a certificate: for he had purchased a freehold house there; and he had a right to come and live in it. The cases cited by Mr. *Norton* are not applicable to the present case. As to that of *St. Nicholas in Harwich and Woolverstone*, in the late master of the roll's reports 1163—it was there asserted as a fact and expressly owned and acknowledged in the certificate that the paupers were inhabitants legally settled at *Woolverstone*; and the pauper came with the certificate from *Woolverstone* to *Harwich*. Whereas here, neither 9 & 10 *W. 3, c. 11*, nor 12 *Ann. stat. 1, c. 18*, affect the case of the settlement now in question; nor did the master come into the parish of *Dacre cum Buerley* under the certificate. And as to the direction of the certificate—it is not directed to the parish of *Dacre cum Buerley*: and Mr. *Norton's* rule will not hold so generally as he has laid it down, that every parish is bound to receive a pauper who comes with a certificate which is not directed to them. As to the case of *Rex v. inhabitants of Petham*, (the last but one) 2 Sir *J. S.* 1147—it is almost in point to the present case. And the reason there given is that the act of 12 *Ann.* never intended to meddle with the case of a legal parishioner's apprentice. And it goes on—the true construction of the statute is, that in respect to the certificated parish, such binding and inhabitation shall give no settlement: but another parish is not within the grievance. So that the words of 12 *Ann.* are confined to that single parish to which the certificate is given; and do not extend to any third parish. The case of *Honiton and St. Mary Axe, Mich. 9 Ann.* in 2 *Salk.* 535, goes no further than that of *Harwich* does; viz. that the certificate is an acknowledgment owning the pauper to be legally settled in the parish that gives it; and that the parish certifying is concluded against all other parishes*. So that it will receive the same answer as has been given to that case of *Harwich*. And the act of 8 & 9 *W. 3, c. 30, sect. 1*, very plainly shews that only the two parishes are concerned; viz. those from which and to which the certificate is given. There was another case between the inhabitants of *Silton and Wincanton, H. 21 G. 2*, (the preceding case) which is in point to the present case. It is so clear upon the penning of the acts of parliament, that we should have had little difficulty about it, though there had been no cases already determined: much less difficulty have we, upon the penning of the acts, and the cases also. Our opinion is, therefore, that the parish of *Dacre cum Buerley* is the parish wherein this *John Thackery* was settled, by his service there under the indenture of apprenticeship: and therefore that the sessions have done wrong, in quashing the original order made for the removal of these paupers from *Bishopside* to *Dacre cum Buerley*. Consequently the order of sessions must be quashed. Mr. Justice *Foster* repeated, that in this case, the master did not go into the parish of *Dacre cum Buerley*, under the certificate; but as the owner of a freehold there, which he had a right to go to and inhabit in. *Per cur*—Order of sessions quashed: and the original order confirmed.

* See 2 *Salk.* 530. Trin. 2 *Ann.* All Saints and St. Giles's in Northampton directly contrary to that case of *Honiton and St. Mary Axe*; and agreeable to the present determination.

On Wednesday 4th Feb. last, Mr. Norton moved to quash an order of two justices and the order of sessions confirming it for the removal of *John Wright* and *Martha* his wife, and *William, Thomas*, and *Sarah* their children from *Wilford* in *Nottinghamshire* to *St. Peter's* in *Nottingham*. The special case stated is, in short, only this—*Beefton* parish gave one *Trent-ham* a certificate to *St. Peter's*. The certificate-man took the pauper *John Wright* to be his apprentice; and the pauper served him some considerable time in *St. Peter's*. Afterwards, *Trent-ham* the master removed to *St. Mary's*; where the apprentice served him about a year. The sessions were of opinion that the certificate extended to *St. Mary's*, though only directed to *St. Peter's*. Mr. Norton said this opinion of the sessions was directly contrary to what the court determined in the case of *Rex v. inhabitants of Bishopside, Tr. 1755*, 28 G. 2. B. R. (the preceding case) viz. that a certificate extends to no other parish, but that single one to which it is given. And the apprentice gains his settlement by the last forty days service; which was in *St. Mary's*, to which parish the master was not certificated. Rule to shew cause. Mr. Norton now moved to make the rule absolute. Mr. *Caldecott* and Mr. *Alston*, contra, gave it up, as being exactly the same point with the cited case of *High and Low Bishopside*. Whereupon the rule for quashing the orders was made absolute. Both orders quashed.

Two justices made an order for the removal of *Anne Hamer*, widow, and her five children, (viz. *Betty*, aged 13, *Ellen*, 9, *Samuel*, 5, *Anne*, 3, and *Thomas* aged 1 year,) from the township of *Castleton* in the county of *Lancaster*, to the township of *Spotland* in the same county: and, upon an appeal, the sessions confirmed that order. The case stated on the sessions: order was this—*John Hamer*, when a boy of about fourteen years of age, was legally bound an apprentice by his father, to one *Oldham*, of *Castleton*, a certificated-person from *Middleton* to *Castleton*; and served his master in *Castleton*, for some years. Then the apprentice removed, with his master, into *Spotland*; where he served him forty days and upward; and then was married to a young woman whose parents lived in *Castleton*: and till the expiration of the apprenticeship, which was upwards of half a year, the apprentice, as such, daily worked with his master in *Spotland*; but went and lodged with his wife, at her parent's house at *Castleton*. On Thursday 18th November last, Mr. Clayton moved to quash these orders: and a rule was made to shew cause. Mr. Norton was now going to shew cause why the original order and the order of sessions confirming it should not be quashed. But it was thought proper, first to hear the objections to them particularly stated. Accordingly, Mr. Clayton, supported by Mr. Attorney-general * objected, that the apprentice, by his lodging with his wife on nights, at her parent's house at *Castleton* for the last half year of his apprenticeship, acquired a settlement there: for that it is the lodging which makes the settlement; and not the service. To prove this, they cited the case of the coachman of *Chipping-Wycombe*, 1 *Strange* 528, and the cobbler's case in 1 *Strange* 51, and the seafaring apprentice's case,

Apprentice-ship to a certificate-man, who removes into another parish, gains a settlement in such parish. 2 Bur. Sett. Ca. 391, East. 29 Geo. 2, (May 15, 1756.) *Rex v. inhabitants of St. Peter's in Nottingham.*

Apprentice-ship to a certificate-man who removes into another parish, gains a settlement in such parish. 2 Bur. Sett. Ca. 527, Hil. 5 Geo. 3, (Feb. 6, 1765) *Rex v. inhabitants of Spotland.*

* Sir Fletcher Norton. (He succeeded Mr. Yorke on the 16th of Dec. 1763.)

in 1 *Strange* 60. The certificate, they said, was now out of the case: for by his residing with his master forty days in *Spotland*, he had gained a settlement there; as they did not reside in *Spotland* under the certificate. Consequently, he came back from *Spotland* to *Castleton*, free from the certificate; just as if there had been no certificate at all; as appears by the case of *High and Low Bishopside* (the last but one,) *Trin.* 28 G. 2, and by lodging there above forty days, he gained a settlement there, subsequent to that he had gained in *Spotland*. The case between the parishes of *St. Mary Colechurch* and *Radcliffe*, in 1 *Strange* 60, (which was in the next term to the cobbler's case) has now settled it that the lodging makes the inhabitancy. Therefore both these orders ought to be quashed. Mr. *Morton*, Mr. *Stowe*, Mr. *Dunning*—on the other side—(for supporting the order removing him to *Spotland* where he worked in the day-time,) argued that it was more reasonable that the apprentice should be settled in the parish where he worked, than in that where he slept for his own pleasure and convenience, not for his master's. And the *Radcliffe* case is not inconsistent with this notion: for there he was in his master's service, on board the ship by night, to guard and take care of it. But the case of going to lie with his wife, was on his own account, not on his master's. But on the certificate, it is decisive. For this certificate was still subsisting; and the master's removal to *Spotland* was voluntary, and not under any order of removal. The master is not stated to have gained any settlement in *Spotland*. In a case between the inhabitants of *Sowerby* and *Halifax*, two or three years ago, (herein after inserted) it was determined that a voluntary removal is no determination of the certificate. So that the master continued a certificate-man to *Castleton*: and the apprentice was part of his family. Mr. *Clayton*, in reply, urged that the apprentice ought not to have been sent to *Spotland*: admitting that he had gained a settlement there, and had not gained a subsequent one at *Castleton*. For the 12 *Ann. stat.* 1, c. 18, *sect.* 2, directs that every such apprentice shall have his settlement in such parish, township or place as if he had not been bound apprentice. His lodging for half a year together in *Castleton* must be with the knowledge and consent of his master: it could not be otherwise. The two acts concerning certificates are, first, 8 & 9 *W.* 3, c. 30, (with its supplement of 9 & 10 *W.* 3, c. 11,) and, secondly, 12 *Ann. stat.* 1, c. 18, *sect.* 2, relating to the apprentices and servants of certificated persons. Here, the master did not reside in *Spotland*, under a certificate. Therefore the apprentice is clear of the latter act; which is confined to the parish to which he is certificated, and wherein he resides under the certificate. The master might have gone back to *Castleton* under the certificate; but he did not: therefore 'tis not like the case of *Sowerby* and *Halifax*. Lord *Mansfield*—It is admitted that the apprentice gained a settlement in *Spotland*. My present thoughts upon this case are these—The master, the certificate-man from *Middleton* to *Castleton*, gained no new settlement in *Spotland*: and the pauper still remained an apprentice to this certificate-man. The master may still go back to *Castleton*, the parish to which he was certificated. Therefore I think, at present, that
the

the apprentice could not gain a settlement in *Castleton*. Mr. Justice *Wilnot*—It would have been incumbent on the township of *Castleton* to shew, if it had been disputed, that the pauper's settlement is in *Spotland*; which might have had some difficulty in it: but it is admitted that he did gain a settlement in *Spotland* by serving and residing forty days there. The only remaining question then is, whether he gained a settlement in *Castleton* by lying there above forty nights; though he worked with his master in *Spotland*, in the day time. But it is now settled (I am speaking independently of the certificate,) that wherever the servant or apprentice lies, he is there settled. As to certificated persons—It has been indeed determined that if a certificate person goes to another parish, and becomes chargeable to it, and is by an order of justices removed from thence to the parish which gave the certificate, then the certificate is at an end; it is satisfied; it is *functus officio*; and it can have its effect but once. *Rex v. inhabitants of Sudbury*. Hil. 28 G. 2, (herein after inserted.) But here, the removal is voluntary; not by force: the certificate subsists; and the apprentice remains part of his master's family. He was so at *Spotland*; and all along continued to be so. The words and meaning of the act seem to be that the apprentice of a certificated person should not gain a settlement where the master himself could gain none. Lord *Mansfield*—I have been looking over the certificate-acts: and I see, they relate to the particular parishes to which the certificates are given. Mr. *Dunning*—If the gaining a settlement in *Spotland*, by serving and residing there forty days, had not been admitted; yet it would have been true that he did gain one there: and so it was determined in the case between the inhabitants of *Dymchurch* and *Petham*, M. 14 G. 2, B. R. (See page 433.) Mr. Attorney General *contra*—If that should be admitted, yet the justices ought not to have sent him to *Spotland*, but to such place where he was settled before his apprenticeship, by 12 Ann. c. 18, sect. 2, which says that he shall have his settlement in such place as if he had not been bound apprentice. For the settlement in *Spotland* is gained under the binding; and therefore could not be the settlement which he had before the binding. Lord *Mansfield*—The act says, that the apprentice shall not gain any settlement in such parish (the parish to which his master came by certificate,) by reason of such apprenticeship or binding; but shall have his settlement in such parish as if he had not been bound apprentice to such certificate person. The former expression is meant to confine it to the parish where the certificate man resided under the certificate. I think that as this apprentice had got an intermediate settlement, he ought to be sent to that settlement which he had intermediately gained. Mr. Justice *Wilnot* agreed to this. For if he was to be sent to this former settlement, which he had prior to the binding, they would send him to *Spotland*, as his last place of legal settlement. *Per Cur.* Unanimously—Rule discharged: and both orders affirmed.

Settlement
gained by ap-
prenticeship,
to a person
who had got
a certificate,
after the ex-
piration of
such appren-
ticeship. 1
Bur. Sett. Ca.
361. Hil. 14
Geo. 2. (Jan.
24, 1740) Rex
v. inhabitants
of Clifthydon.

Two justices removed *Richard Minify*, *Joan* his wife, and *Jemmy*, *Richard*, *Henry* and *Ann*, their children, from *Clifthydon* to *Broadbembury*: the sessions, upon appeal, reversed the order of the two justices. Case stated.—*R. M.* was bound by indenture, bearing date 1 *Jan.* 1716, to *J. Wescott*, for seven years, in *Uffculm*; and lived there with him about two years: at which time, *J. W.* went into *Broadbembury*, and carried his said apprentice with him; where he lived with his said master about two or three years. Then his said master put him to live with one *T. a B.* in *Tallaton*; where he lived about three months, and then returned to his said master in *Broadbembury*, and tarried with him about one week; when his master ordered him to go and live with one *Perrot* in *Broadbembury*; and there he continued to live about the space of three months; at which time *Wescott* died: but the term was not then expired. The said *Minify* never lived with any person, after the death of his said master, under the said indenture. And it appearing unto this court, that the said *Perrot* came into the said parish of *Broadbembury*, with a certificate from the parish of *Ottery St. Mary*, dated the 8th day of *April*, 1724, duly allowed by two justices, as the law requireth, and there lived under the said certificate; this court being of opinion that the said *Minify*'s living with the said *Perrot* as aforesaid, did not gain any settlement in *Broadbembury*, therefore they vacate the order of the two justices. On *Thursday*, 27th *Nov.* last, a motion was made to quash this order of sessions: and thereupon, a rule to shew cause. The objection was, that the master was not a certificate-man during any time of the apprenticeship: and his being so afterwards was immaterial. The rule was now made absolute, without defence.

Son gained a
settlement by
apprentice-
ship, in a
place to which
the father
came by cer-
tificate, after
a removal, 2
Bur. Sett. Ca.
373, Hil. 28
Geo. 2. (Jan.
29, 1755).
Rex v. inha-
bitants of
Sudbury.

Two justices made an order for the removal of *John Bladon* and *Mary* his wife, and *Ann*, *Mary*, and *William*, their children, from *Uttoxeter* in *Staffordshire*, to *Sudbury* in *Derbyshire*: and, upon appeal, the sessions confirmed that order. Case.—One *Thomas Bladon*; and *Bridget* his wife, and their children, were certificated from *Sudbury* to *Uttoxeter*, on the 25th of *March*, 728. *Thomas Bladon* died there. Then *Bridget* the widow, and the present pauper, *John Bladon* (the son of the said *Thomas* and *Bridget*) became actually chargeable in 1731; and were then removed and sent back from *Uttoxeter* to *Sudbury*, together with a copy of the order of the justices, reciting the said certificate. *Bridget* died at *Sudbury*. On the 18th of *August*, 1732, the said *John Bladon*, the present pauper, was bound by indenture, as a parish-apprentice, from the said parish of *Sudbury*, to *Edward Bladon*, of *Uttoxeter* aforesaid; and served out his apprenticeship there; and has done no act since, to gain a settlement. The two justices removed him, by their said order, as a certificate-person: which order, being appealed from, is confirmed; the justices at sessions considering the certificate as still in force; though it was contended that it had been satisfied by the said former removal of the pauper and his father and mother from *Uttoxeter* to *Sudbury*; and that the pauper had gained a settlement in *Uttoxeter*, under the said indenture of apprenticeship. On *Saturday*, 22d *June*, 1754, *Mr. Hume Campbell* moved to quash these orders. He argued that this is not a

case

case within 9 & 10 W. 3, c. 11. (which confines certificate-persons to two methods only of gaining a settlement). He was supported by Mr. Pratt: and they agreed, that he did not come into *Uttoxeter* by certificate; there having been a total end of the certificate of the father and mother in 1731; it having been completed and discharged by the removal of all those that were then in being, of them and their family, back to *Sudbury*, upon their becoming actually chargeable at *Uttoxeter*. And they insisted, that after that, *John Bladen*, the son, was become *sui juris*; and was no longer to be considered as a certificated person. They agreed that there was no case to be found on this point. Rule to shew cause.—On the last day of last *Trinity* term, Mr. Gilbert and Mr. Gould shewed cause against quashing these orders. The question will depend upon the two certificate-acts of 8 & 9 W. 3, c. 30, and 9 & 10 W. 3, c. 11. The acts of 12 Ann. c. 18, (which prevents gaining settlements by serving or being apprentice to certificate-persons, whilst under such certificate), and 3 G. 2, c. 29, *sect.* 8, (for proof of certificates, and for reimbursing overseers, &c.) are further provisions to indemnify parishes against certificate-persons being chargeable to them. As to this pauper's being *sui juris*, the act of 8 & 9 W. 3, c. 30, speaks of certificate-persons and their children (though born in such parish) being removed back, when actually become chargeable. See *sect.* 1, in page 380. This pauper went out of the parish of *Sudbury*, indeed, for a year; but he returned, and was then again under the original certificate. He was therefore, by 9 & 10 W. 3, c. 11, confined to the two methods of gaining a settlement thereby specified; *viz.* renting a tenement of 10*l.* a year; or, executing an annual office in the parish. An after-born child, by an after-married wife, though emancipated, shall yet be considered as a certificate-person: *P. 15 G. 2. B. R.* between the inhabitants of *Thornford* and *Sherborne*. Second point.—The order of removal to *Sudbury*, in 1731, could not destroy the certificate. The case in 2 *Salk.* 535, *pl.* 25, between the inhabitants of *Honiton* and *St. Mary Axe*, was cited, for the court's opinion about certificates—that they conclude the parish who gives them, against all the world. And, to shew how obligatory certificates were upon parishes, a case was cited by them, in which, they said, even bastard-children of the certificate person were holden to be within the certificate: *Rex v. inhabitants of Headcorn, Tr.* 19 G. 2. *B. R.* resolved that the parish giving the certificate, were bound to receive the children, though illegitimate. A certificate of this solemn nature cannot be destroyed by an order of removal; nor ought it to be so, in the nature and reason of the thing; for, the cause of the certificate exists; and when this pauper returned to the parish of *Uttoxeter*, the second time, they were bound to receive him. If part of the family only had been removed from *Uttoxeter* to *Sudbury*, the certificate had stood as to the rest. Here, the parish of *Sudbury* come to defeat their own act. The words of the act of 8 & 9 W. 3, c. 30. Whenever, &c.—import *toties quoties*: and it does not say, that the certificate shall lose its force, after a removal. And no case is cited, to shew that it does. Mr. *Hume Campbell*, and Mr. *Pratt*, the counsel on the other side
(for

Poor. (Settlement by Apprenticeship.)

(for quashing the orders), agreed with their adversaries, as to their principles, and did not dispute their cases; but insisted that neither the one nor the other were applicable to the present case. The present question is merely upon the construction of 8 & 9 W. 3, c. 30, we say [the certificate has had its effect; the engagement has been performed; and this *John Bladen*, the pauper, did not come to *Uttoxeter* this second time, by certificate. According to their argument, a certificate would be everlasting: it would include *Natorum natos et qui nascentur ab illis*. Lord chief justice *Ryder* said, that as this was a new and extensive question, it may be proper to look minutely into the acts of parliament, and the cases cited; and, therefore, he should choose to suspend his opinion till the next term. Rule enlarged. In *Michaelmas* term last, on *Friday* 8th Nov. Mr. *Gould*, who was for supporting the orders, desired leave to inform the court of an additional case, relating to the subject in question, between the inhabitants of *Sowerby* and *Halifax**, *Hil.* 24 G. 2. B. R. And he stated the case to the court. But Mr. *Hume Campbell*, and Mr. *Pratt*, *contra*, alledged, and seemed, in the opinion of the court, to make out, that it bore no similitude to the case now under the consideration of the court. *Cur advis*: And now, Lord chief justice *Ryder* observed, that this case also stood for the opinion of the court: and he declared it as follows, or at least to the following effect. This case will depend upon the construction of 9 & 10 W. 3, c. 11. By a former act of 8 & 9 W. 3, c. 30, every certificate-person was to be irremovable, till chargeable; and then, and not before, not having otherwise gained a legal settlement, was to be removable. On this act alone, it is clear that the present pauper could not have been removed: for this case is expressly within the exception of it; an apprenticeship gaining a settlement, under 3 & 4 W. & M. c. 11, *sect.* 8. But the act of 9 & 10 W. 3, c. 11.—saying that, no person or persons whatsoever, who shall come into any parish by any such certificate, shall be adjudged, by any act whatsoever, to have gained a settlement therein; unless by renting a tenement of 10*l.* a year; or executing some annual office in such parish; would exclude no certificate-persons at all, unless it excludes such as this man is, if he remains bound by the certificate. The question therefore is, Whether he is to be considered as a certificate-man, now, since this act of 9 & 10 W. 3, c. 11. We are all of us of opinion (and I include my brother *Wright*, who agrees with us), that the removal of the pauper, *John Bladen*, by an order of two justices, from *Uttoxeter* to *Sudbury*, did restore him as fully as if there had been no certificate at all: the certificate was, if I may so say, *functus officio*, after this order of removal back again to the parish which gave it. It can have its effect but once: and, therefore, after this removal back again, it can have no further effect. The intention of the certificate is to secure the parish which receives such certificate-persons, from being obliged to support them and their family, in case they shall become chargeable. Now this event did fall out: and they were accordingly removed back again. But the point now under consideration is, what effect this certificate shall have, after this removal back again, and after it has once

had

* See it below (in the resolution of the court) cited at large by the chief justice.

had its intended effect. It was urged, and a case * was cited in order to • Thornford shew, that after-born children shall be included in their father's certificate, and Sherborne And this is right: and it would be a great hardship upon the parish which is bound to receive the certificate-person, if it were not so. But the reason of the thing proves the reverse, in the present case. For the ground and reason of certificates is †, that many poor persons who are chargeable to the places where they live, merely for want of work, may and would maintain themselves in other places where their labour is wanted, without being burthen some to any place. Whereas the continuing them for ever under the certificate, would discourage parishes from giving certificates to such of their poor whose labour might be useful and necessary elsewhere; because, if this method of holding them down to their old certificate, was to prevail, they would be chargeable with them *in infinitum*. And the legislature is so far from thinking of the certificate continuing in force for ever, that it has taken care to secure the parish from inconveniences that might arise to them by granting the certificate; by prohibiting the pauper's return to the parish, under a penalty. The certificate has been compared to a fine, and to a deed indented; and has been argued to be an *estoppel* against the parish which gave it: and the counsel for the parish of *Uttoxeter* cited the case of *Honiton* and *St. Mary Axe*, in 2 *Salk.* 535, in order to shew that certificates conclude and estop the parish which gives the certificate, against all the world. But what does it estop? Nothing but what is included in the certificate; nothing further. And if there was such a resolution as has been mentioned, in *Trin.* 19 G. 2. *Rex v. inhabitants of Headcorn*—that the parish giving the certificate was bound to receive the children, though illegitimate; it must have been upon the foot of their being included in the certificate. It has been said, that the order of removal of this man back again from *Uttoxeter* to *Sudbury*, was in affirmance of the certificate; and that the construction contended for would destroy the certificate. But it does not destroy it, any otherwise than by satisfying it. And there is no absurdity in its being satisfied as to one, and remaining in force, as to another; any more than there is in one covenant in a deed being good, and another covenant in the same deed, bad. The contrary determination would, indeed, be absurd: for it would make certificates continue for ever. There was a case mentioned by Mr. *Gould*, after the argument, said to be between the inhabitants of *Sowerby* and *Halifax*, in *Hilary* term, 24 G. 2, where the father of the pauper, being settled in *Halifax*, came by certificate to *Sowerby*, and married, and had the pauper in *Sowerby*; where the father died: then the wife and son removed to *Halifax*. They afterwards brought another certificate from *Halifax* to a third place; and thence came back to *Halifax*: there the mother died. The son was afterwards bound to a master in *Sowerby*, and served him there; none of the family having otherwise gained a settlement in any other place: The justices held him settled at *Sowerby*; and the order was confirmed at the sessions: but both orders were quashed here. The answer to this case is, that the pauper there had never been removed back, by any order,

† See preamble of 8 & 9 W. 3. c. 30. See page 380.

from *Sewerby* to *Halifax*. Indeed it is possible that the indenture of apprenticeship, in that case, was not stampd. But however, this case is no authority to the present point; because the party was never removed back again, by any order, from the place to which he came by certificate. Therefore—the orders (both of two justices and of sessions) must be quashed.

Settlement
gained, where
an apprentice
was bound for
seven years
and served
five, and then
the indentures
were exchanged.
1 Bur. Sett.
Ca. 274, Trin.
21 & 22 Geo.
2, (June 11,
1748) Rex v.
inhabitants of
St. Mary Kal-
lendar in Win-
chester.

Two justices made an order for the removal of *John Miles* and *Ann* his wife, with *Ann*, *John*, *Sarah*, *Elizabeth* and *Richard* their five children, from *St Mary Kallendar's* in *Winchester* to *St. Michael's* near *Winchester*; and, upon appeal, the sessions quashed that order. Case—*John Miles*, the pauper, twenty-six years ago was bound by indenture an apprentice, for seven years, to *John Gregory* of *St. Michael's* parish; and, under that indenture, lived with the said *John Gregory*, and served in *St. Michael's* for five years; and, at the end of the five years, left his said master; and the indentures were exchanged between the master and the apprentice's father, by consent of the apprentice. And about one year afterwards, the father of the said *John Miles* contracted with *William Stockdale* of *Twysford* for binding the said *John Miles* apprentice to the said *William Stockdale* for four years; and in consequence of that agreement, the said *J. M.* went to the said *W. S.* on trial, and lived with him in *Twysford* for one year and three quarters: but no indenture was executed, nor any other agreement made. And that while the said *John Miles* lived with the said *W. S. John Gregory*, his former master, lived within four miles of *Twysford*, and knew of his being in the service of the said *W. S.* But no other proof was made that the said *J. G.* consented or agreed to the said agreement between the said *John Miles's* father and the said *William Stockdale*. On *Friday 20th May* last a motion was made by *Mr. Stanyford*, to quash this order of sessions: for that the legal settlement of the paupers, on this case stated, is in *St. Michael's*. In support whereof, he cited a case between the inhabitants of *Buckington* and *St. Michael, Sebington*, 2 Lord Raymond 1352. Sir *John Strange*, who now shewed cause, endeavoured to put it upon the foot of a continuation of the old apprenticeship, and a consent of the original master. For Sir *John* admitted his consent to be necessary; and attempted to shew that the state of the case implied his consent. On the other side it was insisted, by *Mr. Stanyford* and *Mr. Henley*, that the exchange of the indentures was a cancelling, an annihilation, an entire discharge of them to all intents and purposes. And if so, there is an end of the question: for then there could be no service under them, after such exchange. However, supposing the indentures still to subsist; yet this is no continuation of the original service. On the contrary, it is quite a new contract, and a quite different one. And of this opinion were the whole court. Lord chief justice *Lee*—There can be no ground to consider this as a settlement at *Twysford*, but upon supposing the first indentures to have subsisted, and that the service at *Twysford* was under them. But that could not be; because the exchange of the indentures

certainly

certainly amounted either in law, or in equity, (and they are the same thing in this case) to a cancelling of them, and a determination of the apprenticeship under them. Besides, there is no consent of the original master: but the contrary is apparent. His knowledge of the fact does not at all imply his consent to the transaction. The apprentice's living at *Twyford*, was not under, but contrary to the first indenture: it was in consequence of a fresh agreement, and for a new term. Therefore Mr. Justice *Denison* and Mr. Justice *Foster* concurred. Mr. Justice *Wright* was not in court. The order of sessions was quashed: and the original order affirmed.

Two justices removed *Mary Bevans* from *Fremington* to *Sherwell* in *Devonshire*: and the sessions, upon appeal from this order, discharged it. The case stated was this—*Mary Bevans*, the pauper, was bound an apprentice, by a parish indenture, to *John Richards* of *Fremington*, to serve him till her age of twenty-one years or day of her marriage, (which should first happen.) She came of age on 23d *November* 1753: when her apprenticeship expired. She served her master, in *Fremington* aforesaid, till about the 1st of *June* 1753: and some time before the said 1st of *June*, *Richards* told the pauper he had no business for her; and she should go where she would. And she went to get a place; but could get none, and returned to her master. Afterwards, *Richards* meeting with a relation of his, one *Nott*, of the said parish of *Sherwell*, who complained of wanting a maid-servant, *Richards* answered he was overstocked with maids, and had an apprentice-maid (meaning the pauper,) which he would spare to *Nott*, if *Nott* and she could agree as to the time and terms. But made no agreement with *Nott*; nor was the pauper present. Afterwards, *Richards* told the pauper that she might go to Mr. *Nott*, and live with him, if they could agree. And the pauper went to *Nott*, on the said 1st of *June*, and made an agreement with him to serve him till *Lady-day* following, for the wages of thirty-two shillings: and she lived with him in *Sherwell* aforesaid, from the said 1st day of *June* till the 15th day of *November* 1753, and received wages for that time; and then went back to her indenture-master (*Richards*) in *Fremington* aforesaid, with whom she stayed eight days; and then her apprenticeship expired, by her coming to twenty one. And it was stated that she had gained no settlement since. The sessions declared themselves to be of opinion that the pauper's settlement was in *Fremington*: and they therefore vacated the order of the two justices, which had removed her from *Fremington* to *Sherwell*.) On the last day of *Hilary* term last; this court was moved, by Mr. *Norton*, for a rule to shew cause why the order of sessions should not be quashed, and the original order affirmed: for that the settlement of the apprentice was in the parish where she had served the last forty days, namely in *Sherwell*: and it was a service under the indenture, being with the consent of the master, and the indenture of apprenticeship having never been discharged.

1 *Strange* 10, and 554, and 582, *Rex v. inhabitants of Buckingham*; and 2 lord *Raymond* 1352, S. C. and 2 *Strange* 1901, *Rex v. inhabitants of St. George*

VOL. III. N^o LXXXIV. 3 M

George Hanover-square. See page 415. The counsel who were to shew cause, in support of the order of sessions, acknowledged the general position that the settlement of an apprentice is in the parish where the last forty days service was performed: but, without pretending to controvert this principle, they raised a doubt whether this was the present case upon the facts stated. For here the master could receive no advantage from this service of the apprentice; but seems to have given her free leave to make her own advantage of it, in the best manner she could: and therefore she may be considered, as being, by his permission, *sui juris*. It was replied that the indenture was never discharged: so far from it, that she returned to her master, and served out her apprenticeship. And the intermediate service, (by his permission) was under it. Lord *Mansfield* said that, as the general principle was admitted, the case was reduced to a very short question. It was very plain, he said, that the pauper was not discharged from her apprenticeship: her master only gave her permission to go elsewhere and serve another person for her own benefit. She did so: and afterwards, she came back again to her master, and was received by him, and stayed with him eight days, which was to the end of her term of apprenticeship. So that it was no more than a generous intention of her master, to give her this permission to serve the other person for her own benefit: but the apprenticeship neither was, nor was intended to be discharged. Consequently, the service with Mr. *Nott* in *Sherwell* was a continuation of the apprenticeship, and performed under it. Mr. Justice *Denison* and Mr. Justice *Foster* expressed themselves to the like effect: and the latter mentioned the case of a servant who was permitted by his master to go away three weeks before the end of his year, in order to take the benefit of the herring-fishing season; and was, notwithstanding his having done so, adjudged to have gained a settlement. *Per Cur*, unanimously—Order of sessions quashed: order of two justices affirmed.

Settlement
gained after
40 days habi-
tation, not-
withstanding
the apprentice
went away
sick, with the
consent of the
master, and
the indentures
were mutually
given up. 2
Bur. Sett. Ca.
511, Mich. 4
Geo. 3. (Nov.
26, 1763)
*Rex v. inha-
bitants of
Titchfield.*

Mr. *Cornwall* shewed cause why an order of sessions made for quashing an original order of two justices made for the removal of *Philip Warfill* and *Anne* his wife, and *William* and *Sarab* their children, from *Titchfield* to *Milford* (both in the county of *Hants*) should not be quashed; and why the said original order should not be affirmed. It appeared upon the order of sessions, that on such a day the difference between the churchwardens and overseers of *Milford* and those of *Titchfield*, touching the settlement of *Philip Warfill* and *Anne* his wife, and *William* aged five years, and *Sarab* aged one year and a half, their children, coming then before the court, upon the appeal of the said parish of *Milford* against the order of *James Ward* and *John Brett* esquires two of his majesty's justices of the peace, &c. adjudging the settlement of the said *Philip* and his wife and children to be in *Milford*; and the matters and merits of the said appeal being fully heard by the court, and argued and debated by counsel on both sides, the court (of sessions) is of opinion and doth order and adjudge that the said recited order ought to be quashed, and the same is hereby

quashed

quashed accordingly; and doth order that the said *Philip Warfill* and *Anne* his wife and *William* and *Sarah* their said children be settled in the said parish of *Titchfield*, there to be provided for according to law: for that the said *Philip Warfill* bound himself an apprentice by indenture dated 24th day of *March* in the year 1761, for three years, to *William Footner* master and mariner; and that he the said *Philip Warfill* inhabited above 40 days with his master in the said parish of *Milford*; that the said *Philip Warfill* falling sick, he, on account thereof, with the consent of his said master, went to his father in the parish of *Bewley* in the said county, and there continued 40 days, and was sick all that time, and to the present time; and on his going to his father, the said indentures were mutually given up, but not cancelled. Mr. *Cornwall*, in support of the order of sessions, argued: 1st, That it appeared manifestly, by comparing times and dates, that this *Philip Warfill* must have been a married man at the time when he bound himself apprentice: for it is stated upon the sessions order that he had a child of five years of age at the time that order was made; and that he bound himself apprentice in the year 1761. Consequently he was married when he bound himself. And he urged that as the statute of 3 & 4 W. & M. c. 11, requires celibacy in a hired servant in one clause, the subsequent clause concerning apprentices must be construed to require them also to be unmarried. See sections 7 and 8, in page 378. 2dly, That *Warfill* the pauper was settled in *Bewley*, by inhabiting 40 days, with his master's consent. And the delivering up the indentures was not a sufficient discharge of the apprentice, without cancelling them; as appears by *Dalton* 180: Mr. Solicitor General (*Norton*) contra—answered, 1st. That his being a married man when he bound himself an apprentice is not expressly stated or meant to be made part of the case; but is a mere inference now made at the bar, by the counsel. But, however, the act does not require this circumstance of celibacy in an apprentice, though it does in a hired servant. Sect. 7, relating to hired servants, says if any unmarried person; sect. 8, relating to apprentices, says, if any person: so that the act itself makes an essential difference between the two cases. 2dly, An inhabitancy by reason of sickness shall not gain a settlement. Suppose a servant breaks his leg in a strange parish, and cannot be removed within 40 days; shall that gain a settlement there? And there is no difference between the indenture's being given up, and its being cancelled: they amount to the same thing. The court being of the opinion with Mr. Solicitor General—the order of sessions was quashed: and the original order affirmed.

Two justices made an order for the removal of *James Capon* and *Christian* his wife from *Botolphampton* in *Dorsetshire* to *Burton-Bradstock* in the same county: and the sessions, upon an appeal, confirmed that order. The facts stated on the sessions-order are these—*James Capon* being settled at *Beamister* in the county of *Dorset*, was, by an indenture, bearing date the 28th day of *March* 1754, bound apprentice to *John Miller* of *Bridport* in the county of *Dorset*, then owner of a ship, (called the *John* and *Samuel*),

Settlement gained by apprenticeship to a master of a ship, by lying in a parish 40 days on board a ship. 2 Bur. to Sett. Ca. 531,

East. 5 Geo. 3.
(May 18,
1764.) Rex
v. inhabitants
of Burton-
Bradstock.

to serve him as an apprentice, and to learn navigation and the art of a sailor, for the term of seven years: and the said *James Capon* did, immediately after the executing the said indenture, enter on board the said ship, and did there serve the said *John Miller* for the said term, as such apprentice. The said ship, during all the time of the said apprenticeship, was employed in a coasting trade from a place called *Bridport-harbour*, in the said county of *Dorset*, to many other ports: and during all that time, the said harbour was, and was considered by the captain and sailors of the ship as the proper home of the ship, and where she returned at the end of every voyage, and always took her departure from thence in the several voyages that she made. During the said time, the said ship was many times in *Bridport-harbour*; sometimes, for a fortnight; sometimes, a month; and sometimes, two months, at a time; but never in any other port, harbour, or place for more than a month at a time. On the 7th day of *December* 1760, the said ship arrived in the said harbour called *Bridport-harbour*, and continued there till the 22d of *January* 1761, being more than forty days; during which time, the said *James Capon* resided, lodged and served *Miller* his master, as his apprentice, on board the said ship, and to take care thereof and of his master's goods therein; it being his business, as *Miller's* apprentice, to take care of and secure the goods on board the said ship, and to prevent their being stolen or imbezzled. And the said ship was never in any other place, or port, forty days after that time. On the 11th day of *March* 1761, the said ship again returned to *Bridport-harbour*, and stayed there till after the 28th day of the same month; on which day the said apprenticeship expired: and during that time the said *James Capon* resided, lodged, and served *Miller*, as his apprentice, on board the said ship, to take care thereof, and of the goods therein. *Bridport-harbour* is a basin within the said parish of *Burton-Bradstock*; which, about twenty years ago, in pursuance of an act of parliament made in the 11th year of his late majesty king *George* the second, was dug and made on a piece of land lying within the said parish of *Burton-Bradstock*, and part of the manor of *Burton-Bradstock*, and which then belonged to Mr. *George Pitt*, (of whom the said piece of land was purchased:) and at the time when the said basin was made, a cut was also made through the land which then lay between the said place where the basin was made, and the sea, to let the sea up to the basin, through which cut ships sail unto the said basin. Since the expiration of the said apprenticeship, the said *James Capon* married *Christian* his present wife; and has gained no settlement, save as aforesaid. Upon the consideration of these facts, and hearing counsel on both sides, it is adjudged by the court of sessions, that the said *James Capon* is settled in the parish of *Burton-Bradstock*: and therefore they confirmed the order of removal. A motion had been made by Mr. Serjeant *Burland*, on the second day of this term, to quash these orders: and a rule was made to shew cause. Upon shewing cause now, Mr. *Thurlow*, Mr. *Dunning*, and Mr. *Mansfield*, in support of the orders, argued that the pauper was last legally settled in *Burton-Bradstock*. The case depends, they said, upon the statute of 13.

§ 144 C. 2, c. 12, for the better relief of the poor of this kingdom. And it is reasonable that this parish should relieve the present pauper, as they received the benefit of his labour. It is the continuance in a parish for forty days that makes the settlement: and this man resided lodged and served in this parish above forty days. Twenty-five years ago, this bason was not covered with water; it was then *terra firma*: therefore a settlement might then, at least, have been gained by such a residence. It was the only residence such an apprentice was capable of: for it is stated to have been the ship's proper home. It was a floating house, and no otherwise distinguishable from ordinary cases, than that this was *Terra aquâ cooperta*: but its being upon water (either fresh or salt,) or being upon dry land, makes no difference in the settlement. The apprenticeship was performed in this harbour: and he was irremovable from it. It is not a passage-residence, or mere casual habitation: it was the home-port of the ship; and no settlement is or can be claimed elsewhere: and therefore cases of accidental residence are not applicable to the present case. But they cited the case of the seafaring apprentice, between the inhabitants of *Radcliffe* and *St. Mary Colechurch*, 1 *Strange* 60, as applicable to the case now in question: and they took notice that the case of *Alton* and *Elvetbam* (herein after inserted) was relied on at the sessions. They observed, in general, that in cases of this kind the determinations have been always favourable to settlements; and that they have been considered as privileges and benefits. Mr. Serjeant *Burland*, Sir *Fletcher Norton*, and Mr. *Meferes*, *contra*, (for the parish of *Burton-Bradstock*,) endeavoured to support the rule for quashing the orders. The three statutes on this subject are 13 & 14 C. 2, c. 12, 1 *Jac.* 2, c. 17, *sect.* 3, and 3 & 4 W. & M. c. 11, *sect.* 8, which enacts that apprentices bound by indenture, and inhabiting, &c. shall gain settlements without notice. But all these statutes must be taken together, and construed alike and consistently. On the true construction of the first of these statutes, it is plain that it was never intended that such an apprentice, bound to a master who was a seaman, and where the service was to be done at sea, or on board a ship, should be included in it. The objects of that law are land-men. How could the church-wardens take notice of or remove such persons as were on ship-board? This is a new jurisdiction given to justices of peace; to infringe the natural rights of the people: for at common law, every person was irremovable from the place where he was resident. Therefore the words coming to settle in a tenement under 10*l.* a year, could never mean such a water-settlement as this: the legislature, who enacted these statutes concerning parish-settlements, could have no such thing as this in their contemplation; neither is the notion supported by any determination made upon them. The parish of *Burton-Bradstock* had no benefit from such a sort of residence as this. If any parish received a benefit, it must be the parish of *Bridgport*, where the master lived. The case of *St. Mary Colechurch* and *Radcliffe*, in 1 *Strange* 60, and of *Alton* and *Elvetbam*, were determined on public principles. A ship, in its nature, is transitory and locomotive: it cannot be considered as having any home. Consequently,

quently, a sailor cannot be considered as a permanent resident: the course of their profession is quite the reverse: their residence in a harbour must, in its very nature, be casual, accidental, and temporary. *Greenland-Dock*, where the *Greenland-ships* lie all the winter-season, is in the parish of *Rotherhithe*; and a ship-keeper lies in every ship: yet no settlement is ever pretended to be gained thereby. Nor has it ever been imagined that apprentices to mariners gain settlements in the parishes below bridge, by lying on board of ships moored within them. *Bridport* is a large port: this harbour is cut out of the small parish of *Burton Bradstock*. It would be very hard and unjust upon this little parish, if they should be bound to keep all the sailors that serve on board the ships lying in this basin; and bear the burthen of all the poor that come to *Bridport*. Seafaring men can never be considered as having a permanent residence. The old settlement, therefore, of this apprentice, continues; as he has never gained a new one. Lord *Mansfield*.—There do not appear to be any former determinations on this subject. Therefore, as we shall gain nothing by looking for them, we may as well make an end of the matter now. Lying in a parish is the same, whether it be on board a ship, or on land. Casual residencies, or accidental inhabitancies, are out of the present case. This harbour, or basin, is stated to be the proper home of the ship; and to be within the parish of *Burton-Bradstock*: and the service was, *bona fide*, without any pretence of collusion, performed in that parish. Therefore, there seems to be no material difference between this case and the ordinary cases of gaining settlements in parishes by apprenticeship. Mr. Justice *Wilmot* said he saw the inconvenience that it had been hinted might happen to this little parish of *Burton-Bradstock*, to the advantage of the town of *Bridport*. But, that inconvenience cannot alter the law: the acts of parliament must be pursued in what they have expressly directed; though a particular parish may be incommoded. Settlements are supposed in law to be indifferent to paupers; though they are often, in fact, desirous of one, in preference to another. These laws must be construed according to the intention of them: and the circumstances of things, at the time of enacting them, ought to be taken into consideration. Now before these acts, no person could be removed from his or her residence; though it had been of ever so short a date. Then a residence for forty days was fixed upon as requisite to establish a settlement. The first section of 13 & 14 C. 2, c. 12, gives power to the two justices, upon complaint made by the churchwardens or overseers, to any justice of peace, within forty days after any poor person's coming to settle in any tenement under the yearly value of 10*l.* by warrant to remove them. This clause excepts only persons renting such tenements: other persons were removable, upon complaint made within forty days, unless they should give security for the discharge of the parish. But whither were they to be removed? They were to be removed to such parish or place where they had been last legally settled, either as natives, householders, sojourners, apprentices, or servants, for the space of forty days. Then the 1 J. 2, c. 17, *sect.* 3, directs, that the forty days continuance, intended by 13 & 14 C. 2, to make a settlement, shall be accounted

accounted from the time of delivery of a notice in writing, &c. Then the 3 & 4 W & M. c. 11, sect. 3, directs, that the forty days shall be accounted from the publication of such notice in writing so delivered: and the 8th section enacts, that if any person shall be bound an apprentice by indenture, and inhabit in any town or parish, such binding and inhabitation shall be adjudged a good settlement, though no such notice in writing be delivered and published. So that an apprentice by indenture, inhabiting in a parish, gains a settlement therein. Now here the harbour is stated to be the proper home of the ship; and considered as such: and it is expressly stated to be within the parish of *Burton-Bradstock*. Therefore, this case is within the common case, as it appears to me. If the apprentice had lain in a house at land within this parish, it had been no question: the apprentice had then been undoubtedly settled there; though the master had lived in another parish. And here *Burton-Bradstock* had as much benefit from the apprentice's labour, as if he had lain there by night, in a cot upon land. Therefore, the apprentice's settlement is clearly in *Burton-Bradstock*. We must take the law as we find it: we cannot alter it, from any apprehended inconvenience to a particular parish. Mr. Justice *Yates* concurred that the settlement was in *Burton-Bradstock*: and he said that the act of 13 & 14 C. 2, c. 12, does not apply to the present case; nor do the cases about casual residence. This is nothing like strolling as a vagabond, from parish to parish. This place was the proper home of the ship: it is not a casual residence, or an accidental inhabiting. It is expressly stated, that this harbour was, and was considered as the proper home of the ship. So that the cases about casual residences are not at all like the present case. And this harbour or basin is expressly stated to be within the parish of *Burton-Bradstock*. Mr. Justice *Aston* concurred; and observed that the statute of 13 & 14 C. 2, c. 12, was made to restrain the migrations of idle vagabond people from parish to parish; and for removing them back to their own former parish. He said, he thought that mere watching on board a ship was not a residence sufficient to gain a settlement within 3 & 4 W. & M. c. 11. Nor will a vessel *in transitu*, accidentally stopping at a port to repair a leak, or take in water, or any such casual occasion, gain a settlement to the sailors on board. But this was the proper home of the ship: it is expressly and circumstantially so stated. And this home of the ship is stated to be within this parish of *Burton-Bradstock*. A casual inhabitation, only to watch a ship (which, I should think, will not gain a settlement); is very different from an apprenticeship served on board it, as its proper home. *Per Cur.*—Orders affirmed, and the rule discharged.

Two justices made an order for the removal of *William Hutchins*, *Mary* Settlement his wife, and their two children, from *St. Leonard's, Shoreditch*, to *St. Luke's* gained, tho' (both in *Middlesex*): and the sessions, upon an appeal, confirmed that or-^{the apprentice} der. The special case stated—*William Hutchins*, the pauper, at fifteen^{was told by} years of age, was bound apprentice by the parish of *St. Peter, Cornhill*, to two years be-^{his master,} fore the expi-^{ration of the} one *Frost*, a shoemaker in *Southwark*, till he should come to the age of^{term, to go} twenty-four years: and served him there three years. The master then^{removed} about his bu-

finest; and accordingly he went away, and hired himself to several masters; but the indentures were not cancelled. 2 Bur. Sett. Ca. 542. Trin. 5 Geo. 3. (June 26, 1765) Rex v. inhabitants of St. Luke's, in Middlesex.

removed to the parish of *St. Luke*, in *Middlesex*, taking the pauper with him; where he served four years. The master then told him to go about his business, and work for himself: but no one was present at the parting, but the master and himself. The indentures were not cancelled or delivered up. The pauper hired himself to several masters of the same trade, as a journeyman shoemaker, in different parishes; and believed the said *Frost* did not know what masters he worked with, after he left him; nor was he ever called upon by, or did he ever account with the said *Frost* for what he earned, but applied the money to his own use: nor did the said *Frost* ever make any enquiry after him, that he knew of; or make any provision for him, after he left him. He worked and lodged the last forty days before he attained the age of twenty-four years, in the parish of *St. Leonard, Shoreditch*. The sessions were of opinion, that the said *William Hutchins* did not gain a settlement in *St. Leonard's, Shoreditch*; and, therefore, confirmed the order of the two justices. On *Friday*, the 7th of this month (the first Day of this *Trinity* term), a motion was made, by *Mr. Lane*, to quash this order of sessions, upon two exceptions. 1st, The master could not discharge this apprentice, without the consent of the parish of *St. Peter, Cornhill*, who bound him out. 2dly, The indentures were never cancelled or delivered up: therefore, he was not properly discharged. Rule to shew cause — Upon shewing cause now against quashing the orders, it was insisted by *Sir Fletcher Norton* and *Mr. Jones*, that this was not a service by the apprentice in *St. Leonard's* with the consent of his master: and, therefore, it was not a service under the indenture. They had long before parted by consent: therefore, he was not serving his master there. It is not like the cases where the master gives his express consent to his apprentice's working with a particular person. They cited the case of *Buckington* and *St. Michael's Seabington*, in 2 *Lord Raymond* 1352, and 1 *Sir John Strange* 582, as a strong authority to prove that he was settled in *St. Luke's*. On the contrary, it was said by *Mr. Lane* and *Mr. Stowe*, that this was a sufficient service for an apprentice to gain a settlement under; as the indentures were not cancelled or given up, but continued in force. In the case cited, the master was broke, and run away: here the master consented. Besides, in that case, the apprentice was not capable of making the contract which he there entered into; viz. hiring himself to serve for a year as a hired servant. This was a working for his master, and under the indenture, which continued in force. The last forty days residence, therefore, gained the settlement in *St. Leonard's*. *Lord Mansfield*. — The indenture of apprenticeship remained in force: and the relation of master and apprentice continued. But this service in *St. Leonard's* can't be considered either as a service of his first master, or as an assignment. *Mr. Justice Wilmot*. — The apprentice's settlement in *St. Luke's* continued. He was incapable of making a contract by way of hiring and service, or of any act to gain a settlement. If the master had assigned over this apprentice to a particular person, it would have gained him a settlement as a service to the first master. But here the apprentice was *sui juris*, as to the purpose of gaining a settlement as serving his first master. What had passed was a total dissolution

lution of the apprenticeship, as to this particular purpose of gaining a settlement under the indenture. This working in *St. Leonard's* was not carrying on the business of the first master there, or serving under the original apprenticeship in this parish of *St. Leonard*. Mr. Justice *Tates* was of the same opinion. He could not gain a settlement there, by serving in that parish under a contract which he was not *fui juris* to make. It differs from an assignment of an apprentice to serve a particular master in another parish. That indeed may be deemed a service of his first master. But here was no privity between the first master and the others whom he served after he had quitted the first. It was a liberty given by the master to the apprentice, to go where he would, and work for himself where he would. Therefore, the settlement continued to be in that parish where he had last served his first master as an apprentice, for forty days; which was in *St. Luke's*. Mr. Justice *Aston* concurred, for the reasons given by Mr. Justice *Wilmot*, and Mr. Justice *Tates*. Lord *Mansfield*.—The indenture subsisted: and this service in *St. Leonard's* cannot be considered either as a service of the first master, or as an assignment. Therefore. *Per Cur.* unanimously—the rule was discharged: and the orders were confirmed.

Two justices made an order for the removal of *John Holroid*, Ann his wife, *Joseph*, *Eunice*, *Sally*, and *Andrew*, their children, (specifying the ages of the children) from *Castleton* to *Hundersfield*, both in the county palatine of *Lancaster*: which original order was set aside and discharged by the sessions, upon the appeal of the inhabitants of *Hundersfield*; it being first ordered by the court, [of sessions] That in case a *certiorari* is brought to remove the said appeal, the facts shall be especially stated. Which facts are as follows:—then the sessions-order states the facts thus—The pauper, *John Holroid*, was, by indenture, dated the second day of *April*, 1741, regularly bound an apprentice to *John Rigby*, of *Castleton*, hatter, for the term of seven years; and worked, dieted, and lodged with his master, in *Castleton*, for four years and an half; and then married a woman who lived in *Hundersfield*. After such marriage, the apprentice (the pauper, worked and dieted, all along, with his master, in *Castleton*, in the day-time, where his master lived, lodged, and carried on his trade: but the pauper lodged at nights with his wife, at her father's house in *Hundersfield*, until the expiration of the apprenticeship, which was about two years and an half from the time of his marriage. *Rigby*, the master, was acquainted with the intended marriage of his said apprentice; and did not take any advantage of the covenant in the said indenture, so as to vacate the same; nor did he, before the solemnization thereof, or at any time afterwards, find fault with his apprentice for so doing. The master was not asked, nor did give leave to his apprentice to lodge in *Hundersfield*; though he knew he lodged there, with his wife, at her father's house. On the first *Monday* in *Trinity* term last, Mr. *Stowe* moved to quash this order of sessions, and to affirm the original order of the two justices; and had a rule to shew cause. Mr. *Dunning* now shewed cause: (the rule having been enlarged, by consent, on the

The settlement of an apprentice, is in the place where he lodges at night; tho' he works and diets with his master in another parish. 2 Bur. Sett. Ca. 369. Mich. 7 Geo. 3. (Nov. 6, 1766) Rex v. inhabitants of Castleton.

last day of last term) and Sir *Fletcher Norton* was on Mr. *Stowe's* side. They agreed that the case was awkwardly stated: no question is stated; nor is there any adjudication that the pauper had gained no other settlement elsewhere. Sir *Fletcher* argued from hence, that the sessions do not appear to have had any sufficient reason to quash the original order: for it may be, that the two justices determined right. And it sufficiently appears, that they have done so. The question undoubtedly was, Whether the place where the apprentice lodged at nights was not the legal place of his settlement. And it is settled, that the place where an apprentice lies, is the place of his settlement. (See the last case but one.) Mr. *Dunning* assented to this last position. Lord *Mansfield*.—Unless you are instructed otherwise, I suppose, and take it for granted, that the sessions meant to state those facts only, upon which they doubted. The point on which they doubted, is manifest; viz. Whether the apprentice gained a settlement in *Hundersfield*, by lodging there at nights: and you agree it to have been settled, that the place where an apprentice lies, is the place of his legal settlement. Therefore, unless you desire that it may be sent back again to be re-stated, it is better to save the expence of further proceedings. Therefore, let the rule be made absolute, for quashing the order of sessions, and affirming the original order. Order of sessions quashed: original order affirmed.

Settlement gained by apprenticeship, though 5l. was given with the apprenticeship, and the indentures not stamped, because the money was paid out of a voluntary charitable subscription for that purpose. 2 Bur. Sett. Ca. 574. Hil. 7 Geo. 3 (Feb. 3, 1767) Rex v. inhabitants of St. Matthew's, Bethnal-Green.

Two justices made an order for the removal of *Mary Fell*, widow, and her five children, that is to say, *Mary*, aged 11 years; *Elizabeth*, aged 9 years; *John*, aged 7; *James*, aged 4 years; and *Anne*, aged 5 months; from St. *Matthew's*, *Bethnal-Green*, to St. *Botolph's*, *Aldgate*: and the sessions, upon an appeal, quashed that order. The order of sessions states the special case—*John Fell*, the husband of the pauper *Mary*, and father of the pauper children, *Mary*, *Elizabeth*, *John*, *James* and *Anne*, was brought up at the charity-school of the parish of St. *John*, *Wapping*, in the county of *Middlesex*; and in the year 1747, was bound apprentice, by indenture, to *John Rudrupp*, a blacksmith, for seven years; and served his whole time, as apprentice, under such indenture, with the said *John Rudrupp*, his master, in the said parish of St. *Botolph without Aldgate*, in the county of *Middlesex*: and at the time of his being put apprentice, the sum of five pounds was inserted in the said indenture as paid, and was actually then paid to the said *John Rudrupp*, in consideration of his taking the said *John Fell* to be his apprentice, out of a voluntary yearly contribution or subscription of divers of the inhabitants of St. *John, Wapping*, aforesaid, for the purpose of putting out boys and girls apprentices, brought up at the charity-school of the said parish of St. *John, Wapping*. That there are annually elected, by the said contributors or subscribers, four trustees to manage the said charity, and a treasurer. That a number of boys and girls are every year bound out by the said trustees of the said charity, as apprentices; and part of the said charity-money is advanced with such apprentices, by such treasurer, by the order of the trustees of the said charity.

ity for the time being: and that the said *John Rudrupp* received the said five pounds mentioned in the said indenture, from the trustees or treasurer of the said charity. That the said indenture of apprenticeship was not stamped with any stamp denoting sixpence in the pound to have been paid by the said master, for every pound of the said five pounds so paid to the said *John Rudrupp* as aforesaid. That the said *John Fell*, in the year 1754, hired a dwelling-house in the parish of *Aldgate*, within the county of the city of *London*, of one *William Wallis*, for five months, during the remainder of a term the said *Wallis* had therein; and for which, the said *John Fell* agreed to pay the said *William Wallis* the sum of four pounds: and the said *John Fell* came, with his family, to settle in the said house, and remained in the same the said five months, and a short time over. And the said house was, at such time of the said *John Fell's* taking and entering on the same, worth, to be let, ten pounds by the year. The sessions allow the appeal, and vacate the order of removal, and order the said poor woman, and her said children, to be sent back to *St. Matthew's, Bethnal-Green*. On *Thursday*, 20th *November* last, *Mr. Lane* moved to quash this order of sessions, and affirm the original order. He made two questions——1st, Whether a settlement was gained by the apprenticeship: for as it was a charity-binding, and the money being paid out of a charity, it may be questioned, whether it was necessary that the indenture should be stamped. (See 8 *Ann. c. 9. sect. 39*, under title **Apprentices**, page 103) 2d, Whether a taking for five months, paying only 4*l.* could be deemed a taking of a tenement of 10*l. per annum* value; when 4*l.* for five months, is not equivalent to 10*l.* for a year. The court gave him a rule to shew cause. *Mr. Stowe* and *Mr. Bearcroft* now shewed cause against quashing the order of sessions, and affirming the original order. They argued, on behalf of *St. Botolph's without Aldgate*, 1st, That it was a doubt whether this could be deemed a public charity, within the act; because it is not a permanent charity. 2dly, That it was not necessary that he should occupy for a year: it is enough, that it is of the yearly value of 10*l.* and that he occupied it above forty days; which brings it within 13 & 14 *C. 2, c. 12, sect. 1*, and makes it a settlement in *Aldgate* parish. However, it is sufficient for us, if we can shew that the paupers were not settled in *St. Botolph's without Aldgate*; to which parish, the two justices have removed them. They cited *Rex v. inhabitants of Shenston*, *M. 32 G. 2*. The case of *South Sydenham and Lamerton*, in 1 *Strange* 57. Another, between the parishes of *Southwold* and *Toxford*, 2 *Strange* 1127. And *Rex v. inhabitants of Llandverras*, in the last term. *Sir Fletcher Norton* and *Mr. Lane*, *contra*, (for *St. Matthew's, Bethnal-Green*) insisted, 1st, That the pauper gained a settlement in *St. Botolph's without Aldgate*, by serving an apprenticeship there: and 2dly, That he did not gain one in the parish of *Aldgate within*, by taking a house there. 1st point—This case falls within the proviso and exception in the stamp act of 8 *Ann. c. 9, sect. 40*, that nothing in that act shall be construed to extend to charge any master or mistress with the payment of any of the said duties, in respect of any money by him or her received with any apprentice or servant who shall be put or placed out at the common or public charge of any parish or town-

ship, or by or out of any public charity; or to require the stamping with any such new stamp as aforesaid, of any indenture, articles, covenant or contract relating to such apprentice or servant as last mentioned. So that no stamp-duty was to be paid in this case, nor the indenture to be stamped with any new stamp. Therefore he gained a settlement under the unstamped indenture. This is a public charity: and a public charity is put in opposition and contradistinction to private charities. The act ought to be construed liberally for apprentices who have fairly served an apprenticeship. 2d Point—The criterion is the ability of the person to hire a tenement of 10*l.* a year value. The state of this case does not shew that this man had such a degree of credit as the statute requires. They agreed to the case of *Shenston*, and of *Llandervas*; and that it was not necessary to reside the whole year; and also that if the value is 10*l.* a year, the person is irremovable within the forty days. But here it is expressly found that he paid only 4*l.* for five months: and therefore it was not of 10*l.* a year value to him, whilst he rented it; though it might be so at some other season of the year: it might be rented by this person at such a season of the year, as to be worth very little. So that this man was not trusted with a tenement of the *bond fide* value of 10*l.* a year. Therefore it is not within the true meaning of this act of parliament. The cases cited do not come up to the present case. Lord *Mansfield* was clear on both points. After stating the facts he declared his opinion on each point separately. 1st Point. It is a public charity, and a very laudable one. It is not necessary that it should be a permanent charity. The reason of the distinction between a public and private charity is obvious: a private one might be calculated to evade the act: a public one cannot be supposed to have been so. This is a public charity within the reason and the letter of the act. 2d Point. We are concluded from treating this tenement as being under 10*l. per ann.* value, by the finding of the justices; who have stated it as a positive fact, that at the time when he took it, it was of the value of 10*l. per annum*: it was then worth so much, to be let. We are not upon the evidence of the value: if we were, perhaps this might come a little matter short of the calculation, by about eight pence *per* month. But the justices have concluded us, by their finding. Clearly, the rent is not material: it is the value that is material. So is the case of *South Sydenham* and *Lamerton*. Therefore I am clear on both points. Mr. Justice *Aston* concurred on both points. The rent only governs, unless the contrary appears. Mr. Justice *Hewitt* concurred also, on both points. 1st, This is clearly a public charity. 2dly, The cases have been determined upon right principles: the value is the criterion. The act meant that the taker of the tenement should be a person of such circumstances and of such notoriety and ability as to be trusted with hiring a tenement of the value of 10*l.* a year. *Per cur.* unanimously—Rule discharged; and order of sessions affirmed.

Settlement
not gained by
apprentice-
ship, where

Two justices made an order for the removal of *Peter Orange*, *Mary* his wife, and *John*, *Jane* and *Joseph* their children, from *Helbeck* to *Gildersfen*, (both in the west riding of *Yorkshire*;) and, upon appeal, the sessions discharged

discharged their order. Case—*Peter Orange* the pauper was born in *Gilder- the indentures*
derfon, then the place of his father's settlement. At the age of nine, he are not stamp-
 was put apprentice, by the church-wardens and overseers of the poor of ed. 1 Bur.
Gilderfon, to *S. G.* of the same place, by indenture; to serve till he at- Sett. Ca. 198.
 tained the full age of twenty-four years: but the said indenture being Mich. 16 Geo.
 produced, the same appears not to be upon stampt paper. The pauper 2, (Nov. 27,
P. O. immediately went into the service of the said *S. G.* who soon af- 1742) Rex v.
 signed him to one *Th.* of *Gilderfon* aforesaid; with whom he lived for some inhabitants of
 years. *Th.* assigned him to one *C.* of *Beefon*; with whom he served, in the township
Beefon, as an apprentice for ten years, and till he attained the full age of of *Holbeck*
 twenty four. (But neither of these assignments were by writing.) That in the bur-
 immediately after the said ten years service, and without ever departing rough of
 out of the service of his said master, he was hired by the said *C.* for one Leeds.
 year; of which, he served him about three quarters of a year, and then
 left the service; and has since done nothing to gain a settlement. That
 the other persons have no settlement in their own right; but are only
 intitled to settlements derivative from him. The court of sessions, being
 of opinion that *P. O.* gained a legal settlement at *Beefon*, discharge the
 order of removal, and order damages to be paid by the township of *Hol-*
beck to the township of *Gilderfon*: Upon Tuesday 17th of November 1741,
 a motion was made, by Mr. *Dennison*, to quash this order of sessions;
 because the indenture was not stampt according to the act of 8 Ann. c. 9,
 sect 39, (which act is, by 9 Ann. c. 21, sect. 7, made perpetual; as to these
 duties.) By this 39th section, indentures not stamped or tendered to be
 stampt, shall be void, and not available to any purpose whatsoever; and
 the apprentice shall have no privilege of freedom or using his trade. On
 shewing cause upon the 27th of January following—after being argued by
 Mr. *Legge*, in support of the order of sessions, and Mr. *Denison* and Mr.
Cookson against it—Lord chief justice *Lee* said it depended upon the acts of
 parliament; which they would look into and consider. It was now again
 argued by Mr. *Legge* and Mr. *Bootle*. Mr. *Legge*, who shewed cause
 against quashing the order of sessions, said the act of 5 W. & M. c. 21,
 was the first act of parliament that lays a duty upon indentures; (viz. 6d.
 upon each piece of parchment on which indentures are written;) and says
 it shall not be given in evidence or admitted to be available in any court,
 till the duty and also a penalty of 5l. be paid, and the parchment or paper
 be stamped. But afterwards they may be, and in daily practice are. But
 this act does not make them void to all intents and purposes; as the 8 Ann.
 c. 9, does. The 9 & 10 W. 3, c. 25, sect. 30, adds 6d. but expressly
 excepts the indentures of poor persons: except indentures for binding
 poor parish children apprentices. The 8 Ann. c. 9, is the only act that
 makes unstampt indentures void to all intents and purposes: but that act
 has an express exception as to charities; viz. sect. 40. Money given to
 put out apprentices either by parishes or public charities shall not pay
 any duty. Therefore the present case rests on 5 W. & M. c. 21. It is
 not like the case of *Guerden* and *Leyland*: which was not the case of a
 parish apprentice; but a case where money was paid by the parent to the
 master

master. By 13 & 14 C. 2, c. 12, he gained a settlement at *Beeston*, by residing in it forty days irremovable. Indeed 3 & 4 W. & M. c. 11, *sect.* 3, requires notice: but the 8th section expressly excepts apprentices bound by indenture. This person, therefore, being an apprentice by indenture (not void to all intents and purposes,) and having inhabited forty days in *Beeston*, has gained a settlement there within 13 & 14 C. 2, c. 12. He moreover objected to the original order. 1st, The burrough of *Leeds* is not mentioned in the body of the order, but only in the margin. It does not appear, therefore, that the two justices had jurisdiction to make this order. 2dly, The words of adjudication are—was the last place of legal settlement; instead of adjudging that it is the last place of legal settlement of the pauper. It ought to have been in the present tense. Mr. *Booth* denied that this case was within the exception of the 8th section of 3 & 4 W. & M. c. 11, because this was no indenture of apprenticeship: it was totally unavailable in any court, having never been stamped. Therefore the court of sessions could not admit it as evidence, or have any regard at all to it. He did not rely upon the other two acts, of 9 W. 3, c. 25, or 8 Ann. c. 9, but altogether on 5 W. & M. c. 21, which is not repealed by either of them. As to the two objections to the original order—1st, There is a sufficient reference to the margin. 2d, The adjudication is agreeable to the very words of the statute. Lord chief justice *Lee*.—As to the jurisdiction of the justices—I take it to be settled, that in orders, the margin is to be considered as part of the order, and a plain clear reference to it is sufficient. Here the margin is—burrough of *Leeds*: and the direction is—to the churchwardens and overseers of the township of *Holbeck* in the said burrough. This reference is sufficient in an order: As to the 2d exception to the order of the two justices—The act of 13 & 14 C. 2, c. 12, is—where they were last legally settled. This adjudication that *Gilderson* was the last place, &c. is well enough: it must be taken, that it was so at the time of the adjudication. As to the main point, (which is upon the order of sessions)—there is not a sufficient service under the hiring for a year. Therefore the case must stand singly upon the foot of the service under the apprenticeship. Now as to that—I think the indenture cannot be available in evidence in any court, by the express words of the act of 5 W. & M. c. 21, *sect.* 11, which stands unrepealed by any of the subsequent acts. And yet this indenture was necessary evidence to make out the proof of a binding by indenture: for that binding could be no otherwise proved than by the indenture. But this indenture, being unstamped, was not admissible as a proof of the thing: it could not be given in evidence, or admitted to be available. And yet it must be taken, upon the state of this case, that the indenture, though unstamped, was received in evidence by the court of sessions. Therefore the order of the two justices made for removing the paupers to *Gilderson*, *Peter's* original settlement, ought to be affirmed; and the order of sessions quashed. The three other judges concurred; and held the difference between orders and indictments to be, that in orders, the margin is to be considered as part of the order, and a clear plain reference to it

is sufficient: but in indictments, the county must be expressed in the body; and a reference to the margin is not sufficient. They thought the adjudication in the preterperfect tense (was the last place, &c.) to be well enough: and Mr. Justice *Wright* cited a case in *P. 13 G. 1, B. R. Rex v. inhabitants of Oulton*; where this objection was over-ruled; as it also was, in the case of *Hackney*, and many other cases. And as to the unstamped indenture—that could not legally be given in evidence to the sessions, or admitted to be available in law or equity: and therefore they ought to have had no regard to it. *Per Cur*, unanimously and clearly, order of sessions quashed: order of two justices affirmed.

Two justices made an order for the removal of *Catharine Edwards* (the widow of *John Edwards* lately deceased,) *Elizabeth, Catharine, Anne, Edward* and *Thomas* their children (aged 12, 10, 8, 6 and three years respectively) from *Llanidan* to *Llanvair Dyffryn Clwyd* (both in *Denbighshire*:) and the sessions, upon appeal, confirmed that order. Special case—The said *John Edwards* was, about two years ago, by virtue of an agreement in writing or indenture duly entered into between *John Jones* of the one part, and one *Edward Jones* father of the said *John Edwards*, for and on the part and behalf of the said *John Edwards* his son, then an infant, of the other part, thereby put and placed to be an apprentice to the said *John Jones* for and during the term of three years, to learn his art or trade of a taylor: and by the said agreement or indenture, the said *John Jones* the master was to provide the said apprentice *John Edwards* with meat, drink, washing and lodging during the said term of three years. That the said agreement or indenture so entered into was not stamped according to any act of parliament; nor signed by the apprentice *John Edwards*; nor was the said *John Edwards* a party thereto: but it was signed executed and entered into, by the said *Edward Jones* the father, for and on the part and behalf of the said *John Edwards* his said son. That the said *John Edwards* well and faithfully served his said master *John Jones*, as an apprentice, by and under the said agreement or indenture as aforesaid, in the parish of *Llanvair Dyffryn Clwyd* aforesaid, for and during all the said term of three years, according to the purport true intent and meaning of the said agreement or indenture: That he the said *John Edwards* the apprentice also resided inhabited and lodged with his said master *John Jones* in the parish of *Llanvair Dyffryn Clwyd* aforesaid during all the said term of three years. That the paupers or any of them have not gained any settlement elsewhere, in their or any of their own rights. Whereupon the sessions is of opinion that the last legal settlement of the said several paupers is in the parish of *Llanvair Dyffryn Clwyd*. Therefore they confirm the order of the two justices, with costs. On Monday 30th April last, a motion was made by Mr. *Gundry*, to quash these orders; and he obtained a rule to shew cause why they should not be quashed. 1st Objection. The apprenticeship ought to be by indenture: whereas this is only stated to be by agreement or indenture. 2d. The indenture (if it was an indenture) ought to be stamped: and not being.

Settlement not gained by apprenticeship where the indentures are not stamped. 1 Bur. Sett. Ca. 236, Trin. 17 & 18 Geo. 2, (May 30, 1744) Rex v. inhabitants of Llanvair Dyffryn Clwyd.

being stamped, it ought not to have been admitted in evidence; being absolutely void to all intents and purposes whatsoever, and inadmissible in evidence. 3d. The apprentice never signed or executed, or was even party to this agreement or indenture. Mr. *Lloyd* now shewed cause. To the 3d objection, of the apprentice's not executing or even being party—he answered, that it was not necessary: if it was, no infant could ever be bound or learn a trade. But as to the 2d exception—he agreed that if the case of *Cuerden* and *Leyland* was to be looked upon as conclusive, it would be an authority against him. But there was a circumstance in that case, that the sixpenny duty was not paid; and therefore by 8 & 9 *Ann. c. 9*, the indenture could not be given in evidence at all: which is not the present case: but the court said it was holden in that case upon the words of the acts, that the indenture not being stampd, was absolutely void to all intents and purposes whatsoever. And Mr. justice *Denison* mentioned a subsequent case determined accordingly; viz. *Rex v. the inhabitants of Holbeck*, M. 16 G. 2, B. R. (the preceding case.) *Per cur.*—Rule made absolute for quashing both orders. Note—No mention was now made, on either side, of the first exception taken on the original motion: nor did the court say any thing as to the third.

Settlement
not gained
by appren-
ticeship, un-
less a binding
within the
act appears.
1 Bar. Sett.
Ca. 292.
Tria. 22 &
23 Geo. 2,
(Ju. 6, 1749)
*Rex v. inha-
bitants of St.
Helen's in
Abingdon.*

Two justices made an order for the removal of *Anne Hutt*, the wife of *Joseph Hutt* (who had absconded for six months) and her four children (naming them and specifying their ages) from *St. Saviour's Southwark* to *St. Helen's*: and the sessions, upon appeal, confirmed that order. The special case set forth long and minute circumstances and parol evidence concerning an indenture of apprenticeship (not produced) of *Joseph Hutt* the father, to *William Hutt* his grandfather: upon the whole of which, it appeared that the indenture was not produced, and probably (even to a very strong presumption) was never stamped. On *Tuesday* 18th of *April* last, a motion was made by Mr. *Lawson*, to quash these orders. He made two objections to the original order, and two to the order of sessions. To the original order—1st, It sends the woman from her husband. 2dly, It adjudges *St. Helen's* to be the place of her settlement: whereas, it should have been his, the husband's. To the order of sessions—1st, There is only parol evidence of an indenture, which ought itself to have been produced. 2d, It does not appear to have been stampd. Upon shewing cause now, it was urged that the settlement was in *St. Helen's*: and the case in 2 *Salk.* 470, between the inhabitants of *Dumbleton* and *Beckford* was cited; and also *Rex v. inhabitants of St. Mary Chester*, H. 14 G. 2, B. R. Mr. *Ford*, for *St. Helen's*, said that the case cited out of *Salkeld* was a strange case. And I find by my own notes, that the *Chester* case was never determined: it was, by consent, sent down to be more certainly stated, on *Tuesday* 17th *November* 1741. *Per Cur.* clearly—there is not enough stated to shew that this is a binding within the act. Therefore both orders quashed.

Two justices removed *William Sheers* and *Sarah* his wife from *St. Cuthbert's* in *Wells*, to *Westbury* (both in *Somersetshire*;) and the sessions confirmed this order. The special case was this—*William Sheers*, the pauper, being settled in *St. Cuthbert's* in *Wells*, was bound an apprentice on the 4th of *December* 1753, by indenture of that date, to *John Collier*, who then and for several years before resided in *Westbury*, but whose legal settlement was at *Harptree*, a neighbouring parish: and accordingly, the said *William Sheers* entered into the service of the said *John Collier*, on the said 4th of *December*. The said *John Collier* having been some years before applied to by the parish officers of *Westbury*, to obtain a certificate from *Harptree*, (which he then promised to do,) did afterwards, on the 26th day of the same month of *December*, obtain a certificate from *Harptree*, acknowledging him to be their inhabitant legally settled: which certificate was, the same day, delivered to the overseers of *Westbury*. *William Sheers*, the pauper, continued with and served the said *John Collier*, under the said indenture of apprenticeship, from the said 4th day of *December*, for and during the space of three years; and resided all that time with his said master *John Collier* in the said parish of *Westbury*; and then married the said *Sarah* his wife. Mr. *Gould* moved, on *Monday* 27th *November* 1758, to quash these orders. He objected to them, that *William Sheers* gained no settlement in *Westbury*, by this apprenticeship: and relied on 12 *Ann. stat.* 1, c. 18, *sect.* 2, which directs, that no one shall gain a settlement by serving a certificate-person, as a hired servant or apprentice. On *Wednesday* last, Mr. *Burland* and Mr. *Popham* shewed cause why this order should not be quashed: and they stated the question thus—whether the pauper should be defeated of his settlement, by a subsequent act of the master, (an *ex post facto* act,) without the apprentice's consent, after the apprentice had not only begun his service, but even actually served twenty-two days of it. They argued that he shall not be defeated of it, by this subsequent act of the master. If he had served forty days, it is clear that his settlement (being thereby completely gained) should not be defeated by such an *ex post facto* act of the master. This question depends on 12 *Ann. stat.* 1, c. 18, *sect.* 2, which act, and also its preamble, they urged very particularly; and argued that this case is neither within the words nor meaning of it; which shall not be taken strictly. So on 3 & 4 *W. & M. c.* 11, *sect.* 7, a person having a child or children, is not strictly within it; yet this has not been strictly kept to. Suppose a corporator should be disfranchised, (perhaps only in order to become a legal witness in a cause,) would that disable his apprentice from claiming his freedom? Similar cases are, bankruptcy cases under 1 *J.* 1, c. 15, where a prior settlement, fairly made by a man upon his children, shall not be invalidated by subsequent bankruptcy. *Cro. Car.* 550, in the case of *Crisp v. Pratt*; 3 *Peere Williams* 298, *Lilly v. Osborn*. In which cases, the reason was, because the person was not in debt nor a trader at the time of making the settlement. So here, the master was

Settlement not gained by apprenticeship to a master who at the time of binding had not a certificate, but obtained one 22 days after the binding; otherwise, if the apprentice had served 40 days before the master had brought his certificate. 2 Bur. Sett. Ca. 4070. Hil. 32 Geo. 2, (Feb. 9, 1759,) *Rex v. inhabitants of Westbury*.

not a certificate-man, at the time of the binding. This right was in part vested; and therefore shall remain unaffected by a subsequent act. The right of dower, in a feme covert, is not complete till the death of the husband: yet she shall claim, &c. *Perkins, sect. 9*: On 3 & 4 W. & M. c. 11, *sect. 7*, and 8 & 9 W. 3, c. 30, *sect. 4*, a person unmarried at the time of the hiring, though married afterwards, shall not be precluded from gaining a settlement. And here can be no retrospect or relation: for relations cannot do a wrong to strangers. And the prior application of the parish of *Westbury* to the master, to procure a certificate from *Harp-tree*, makes no difference: or if it does, it is on our side; for it shews their acquiescence in his remaining there without any certificate. And the parish of *Westbury* could not be hurt; because it was in their power to have removed the master at any time before he had procured his certificate. Mr. *Gould* and his brother, *contra*, against the orders.—The parish of *Westbury* might have removed the master, and his apprentice, and all the master's family, within the twenty-two days, it is true: but there still remained eighteen days, after the delivery of the certificate, wherein they were bound down to receive them all. So that they would receive a great injury, if there should be no retrospect at all in this case. This pauper cannot be said to have performed an apprenticeship with a master who resided in this parish without a certificate. And this would give a great opening to imposition upon parishes: whereas the parishes to which persons come with certificates, are to be favoured. As to the intermediate marriages of servants between the beginning and completion of their service; it has been so ruled, in favour of, or at least not to discourage matrimony. This case is within the words of 12 Ann. if they are fully considered and attended to: but it is certainly within its meaning. And the preamble of an act does not use to specify all the mischiefs which the enacting clauses intend to obviate. Every intended certificate-man might, at this rate, take apprentices, and fix them upon other parishes, by doing it without notice, and then procuring a certificate as soon as the parish make any objection to his residence. Lord *Mansfield*—This is a new question: and there is no case in point. It seems to me, at present, that the apprentice cannot have here gained a settlement in *Westbury*. Before the act, serving under an apprenticeship to a certificate-man for forty days in the parish where the master lived would have gained a settlement to the apprentice in the parish where the certificate-man resided. But the * act says, that if any person whatsoever, who shall be apprentice bound by indenture to any person whatsoever, who did come into, or shall reside in any parish, by means or licence of such certificate, (and not afterwards having gained a legal settlement in such parish,) such apprentice, by virtue of such apprenticeship, indenture or binding, to such person, shall not gain any settlement in such parish, by reason of such apprenticeship or binding. Now here is no service for forty days, under an apprenticeship to a master who did not come into or reside in this parish by means or licence of a certificate. And this is a precedent condition, that the apprentice must be bound to and serve for forty days, a master not residing

* 12 Ann.
stat. 1, c. 18,
sect. 2. See
page 385.

residing by licence of a certificate: or else, the apprentice shall not be intitled to a settlement. Whereas the being unmarried is only a subsequent condition; which shall not destroy a right already inchoate. Therefore it is not like that case. And this method of acquiring a settlement might be attended with great inconvenience, both to parishes and apprentices. It had been a very different case, I should think, if the apprentice had actually served forty days; and regularly completed his settlement thereby, before the master became certificated. This, he said, was his present opinion: but he had no objection to considering further of it. Mr. Justice *Denison* desired to think of it, for a day or two. Mr. Justice *Foster* and Mr. Justice *Wilmot* were silent. Lord *Mansfield*—We will let you know our opinions in a day or two. *Cur. Advis.* Lord *Mansfield* now delivered the opinion of the court; which he said was agreeable to their sentiments intimated upon the argument: for their opinion, he said, upon this binding so circumstanced as is stated, and a service of only twenty-two days under it, by the apprentice in *Westbury*, was, that he has gained no settlement there. For it is in the nature of a condition precedent to the gaining any settlement at all, that the apprentice must have been bound to, and served for forty days, a person who did not come into or reside in the parish by means or licence of a certificate: and as in the present case, this precedent condition has never been performed, he cannot have gained a settlement. And it is distinguishable from the case to which it has been compared, of a servant hired when unmarried, and marrying before his year is expired, (which has been holden not to prevent his settlement;) because there the event was subsequent to the contract, which was complete and strictly regular when entered into, and required no precedent condition of that kind; it being only necessary to be unmarried when hired: so that in that case, it is in the nature of a condition subsequent. But this is a condition precedent; and the apprentice is under an absolute disability of gaining a settlement, unless he is bound and serves forty days to a man who did not come into or reside in the parish, by means or licence of a certificate: which this pauper has not done: and consequently, he has gained no settlement by this service. Both orders quashed.

Settlement by Birth.

On *Wednesday* 5th of *February* last, a motion was made by Mr. *Wilbraham*, to quash an order of sessions vacating and setting aside an original order of two justices made for the removal of *Joseph*, the son of *Joseph Haighinton*, from *St. Peter's* in *Worcestershire* to *Old Swinford* in *Staffordshire*. The two justices removed him as being a bastard born on the body of one *Hannah Afke*, at the house of *R. B.* in *S.* in the parish of *Old Swinford*. Original order—Whereas complaint hath been made by church-wardens, &c. of *St. Peter's*, &c. &c. that *Joseph Haighinton* and *Joseph* his son (being a bastard) have lately intruded themselves into your said parish of *St. Peter's*, there to inhabit as your parishioners, contrary to the laws relating to the settle-

A bastard is settled where born, though called in the order the son of I. H. the father. 1 Bur. Sett. Ca. 25, East. 8 Geo. 2, (May 3, 1735) Rex v. inhabitants of St. Peter's in

Worcester-
shire. 2 Sess.
Ca. No. 180.
S. C.

ment of the poor; and are there likely to become chargeable, if not timely prevented; and whereas upon due examination and inquiry made into the premises, upon the oath of the said *Joseph Haighington*, it appears unto us, and we accordingly adjudge, that the said *Joseph* the son is likely to become chargeable unto the said parish of *St. Peter's*; and that the last legal place of settlement of the said *Joseph* the son was in the said parish of *Old Swinford* aforesaid, in which parish he was born on the body of one *Hannab Aske* (being a bastard) at the house of *Ralph Boulton* in the parish of *Old Swinford*: these are therefore, &c. *Old Swinford* appeals to the sessions. The sessions state this special case.—And whereas upon the examination of *Joseph Haighington* upon oath in this court, the said *J. H.* gave in evidence, that for seven years together, he travelled with the said *Hannab Aske* as wandering persons from place to place, till the time of the death of the said *H. A.* which was about fifteen weeks since; and that during all that time they cohabited and lay together as man and wife: (and it did not appear that the marriage was ever questioned in the life-time of the said *Hannab*) that during the time that he and the said *H. A.* did so cohabit as man and wife, the said *Hannab* was delivered of three children: the said *Joseph*, one of them, who was the person removed by the said order, being of the age of five years or thereabout, was born in the said house of *R. B.* of *S.* in the parish of *Old Swinford*. That the said *Joseph* and the other two children were reputed as his children, and baptized as the legitimate children of him and the said *Hannab*. That he and the said *Hannab Aske* were never married. It appearing to this court, upon the evidence of the said *Joseph Haighington*, that the said *Joseph* the infant was born during the time that the said *J. H.* and the said *H. A.* did cohabit and lie together and were reputed as husband and wife; and there being no other evidence; this court is of opinion that the evidence of the said *J. H.* cannot support the order, so as to bastardize the said *Joseph* the infant removed; the said *J. H.* having cohabited with the said *Hannab* near seven years as husband and wife. And therefore this court (the sessions) doth order that the said order be vacated and set aside, with ten shillings costs. And the same is vacated, &c. The counsel, who now shewed cause (on behalf of the parish of *Old Swinford*) against quashing the order of sessions, said, that the order of the two justices was absurd; because it called the bastard the son of *J. H.* whereas a bastard is *nullius filius*. But the child did not appear to be a bastard. For even admitting the validity of the evidence, that *Hannab Aske* was never married to *J. H.* yet she might be married to another person. But this *Joseph Haighington*, who gave the evidence, could not be a proper witness in the case: for nobody can be adjudged a bastard without the evidence of the woman. The order of the two justices is a bad one: and the sessions have acted properly in discharging it. Lord *Hardwicke*—Surely there is no ground to support the last order (the order of sessions.) The first order indeed goes a little too far in calling him a bastard, the son of *J. H.*; (because, strictly speaking, a bastard is *nullius filius*;) but that is only an impropriety; and the order is therefore well enough, for the purpose of removing the pauper to *Old Swinford*

Swinford, where he was born. As to the order of sessions—it is an apparent fact, that *Joseph Haighington* himself was never married to her. And what is there to make him an incompetent witness? It was an objection to an order of bastardy, two terms ago, that it was founded upon the evidence of a married woman, which ought not to be admitted to discharge her husband. But this man does not swear to discharge himself: for whether he be the legitimate, or only the natural father of the child, he is equally bound to maintain it. The order of sessions was quashed; and the order of the two justices affirmed. The rule is entered in the following words: *Saturday* next after three weeks from the feast day of *Easter*, 8 G. 2.

Worcestershire. } IT is ordered, that the order of sessions made
The king against the } in this cause for quashing the original order
inhabitants of the pa- } made in the same cause for removing one *Joseph*
rish of *St. Peter's* in the } *Aske* from the parish of *St. Peter's* in the said
said county. } county of *Worcester* to the parish of *Old Swinford*
in the said county, be quashed for the insufficiency
thereof: and that the said original order be af-
firmed. On the motion of *Mr. Wilbram*.

Two justices made an order for the removal of *Hannah Beamont*; (a bas- A bastard is
tard-child of a certificate-woman,) from *Lydlinch* to *Helton*, (the place of settled where
its mother's settlement) both in *Dorsetshire*. Case—*Mary Beamont*, being born, though
then about sixteen years of age (and afterwards the mother of *Hannah* it be the child
Beamont the pauper now removed) lived with her the said *Mary Beamont's* of a certificate-
mother in *Lydlinch*, her said mother being then the wife of *Andrew Miles* woman. 1 Bur.
of *Lydlinch*, labourer. And she the said *Mary Beamont* being of a loose Sett. Ca. 187,
character, in respect of her chastity, in the said parish of *Lydlinch*, and Trin. 16 Gco.
her place of legal settlement being in *Helton*, the overseers of *Lydlinch*, on 2, (June 5,
the 4th of *Feb.* 1734, obtained an order under the hands and seals of, &c. 1742) Rex v.
two of his majesty's justices, &c. of *Dorset*, bearing date the said 4th of inhabitants of
Feb. 1734, for the removal of the said *Mary Beamont* from *Lydlinch* to Helton. 2
Helton as the place of her last legal settlement: and she was by the said C. Stran. 1158.
order removed accordingly. And on the 7th of the said month of *Fe-* 2 Sett. Ca.
bruary, and after service of the said order, and without appealing from No. 170, S.
the same, the church-wardens and overseers of the poor of the said parish
of *Helton*, by a certificate, under their hands and seals bearing date the
said 7th of *February* 1734, to the said parish of *Lydlinch* duly and legally
made executed and delivered, did thereby own and acknowledge the said
Mary Beamont to be an inhabitant legally settled in the said parish of
Helton: by virtue of which certificate the said *Mary Beamont* on the same
day returned and lived again with her said mother, in the said parish of
Lydlinch; and whilst she so resided in the said parish of *Lydlinch* under
the said certificate, to wit, on 16th *Feb.* 1735, she the said *Mary Beamont*
was delivered of the pauper, the said *Hannah Beamont*, and who is a bas-
tard child. Whereupon and upon debate of the matter and hearing
counsel,

counsel, &c. on the case as above stated, the sessions confirm the order of the two justices. Upon *Monday* the 24th of *May* last, a motion was made, by Mr. *Lloyd*, to quash these orders. The objection was, that the bastard's settlement was in *Lydlinch*, the parish where it was born: and it could not be sent to the place which gave the certificate; as a legitimate child might have been. Mr. *Gundry*, who shewed cause now, on behalf of the parish of *Lydlinch*, against quashing the orders, argued that *partus sequitur ventrem*; and that this case was within the words as well as the meaning of the certificate-act of 9 & 10 *W. 3, c. 30*; which makes no difference between legitimate and illegitimate children. And the parish of *Lydlinch* were, by 8 & 9 *W. 3, c. 30*, obliged to receive the mother upon her bringing a certificate from *Helton*. And even when they perceived her to be with child, they could not remove her till she was brought to bed and thereby become actually chargeable to them. Therefore it is but just that *Helton*, who gave her the certificate, should maintain the child. He said, this was a fraud: and cited 2 *Bulst.* 349. 2 *Salk.* 474. 2 *Salk.* 532, and a case of the parish of *New Windsor, Tr, 5 G. 1*, about one *Pizzey*, a certificate-man from *White Waltham*, who had bastard-children born in *New Windsor*. (See Sir *John Strange* 186, where it is reported quite against him.) Mr. *Lloyd*, on the other side, not only insisted that all bastards are settled where they are born; but pretended that the certificate stated upon this order was not pursuant to the certificate act; and consequently the parish of *Lydlinch* was not bound to receive the mother of this bastard: for it is not stated to be allowed by two justices, nor to be attested by two witnesses: therefore it is as no certificate at all. Lord chief justice *Lee*—This woman was removed from *Lydlinch* to *Helton* by an order of two justices: and three days afterwards, the parish of *Helton* sent her back to *Lydlinch* with a certificate, acknowledging her to be their parishioner. She was, a little more than a year afterwards, there delivered of a bastard-child; which is the pauper now removed from *Lydlinch* to *Helton*. As to the certificate—it is stated to be duly and legally made executed and delivered. Therefore we have no reason to take it otherwise, than that it was such a certificate as the parish were obliged to submit to. If the certificate had been doubted of, with regard to its validity, there would have been negative words inserted in the special state of the case: this, as stated, is good to a reasonable intendment. I apprehend that we cannot in any degree consider this as a fraud. There appears none upon the fact as here stated by the justices. And it is plain that she was not with child when the certificate was given: for she was not delivered till above a year after. Besides, it is a certain rule that fraud must be expressly stated; or else the court can take no notice of any. However, here does not appear any ground or suspicion of fraud, upon the facts stated. The cases cited by the counsel who argued for quashing the orders, do not come up to the point of the present case. That in *Bulstrode* was apparent practice, and went upon the fraud.

* 2 *Salk.* 474. And those in *Salkeld** were illegal removals of women big with child, and the case of
 Much Wal. very soon brought to bed. And if a pauper big with child is sent by an
 order

order of removal to a parish; and before the parish can relieve themselves, ^{tham and Pe-} the pauper is brought to bed; the parish shall be relieved, if that order ^{ram: and} is afterwards reversed. For every thing that happens under an illegal ^{§ 32, West-} removal shall be chargeable upon the parish from whence the illegal re- ^{bury and Cal-} moval was made; and the birth of the child in the other parish was oc- ^{ton.} casioned by the wrongful removal of the mother to that parish. So a child born in a gaol is of a different consideration from the present: there the woman is in *custodia legis*, to answer the offence charged upon her; but in other respects, she shall be considered as a parishioner of her own parish. It seems to depend entirely on the statute of king William †; which † 8 & 9 W. 3, obliges the parish to receive a certificate-person with his or her family and ^{c. 30.} children, and to suffer them to continue there till actually chargeable: then indeed the certificate-person and his children (though born in the parish) may be removed. The question is, whom they have a power to remove as children. Now bastard-children cannot be considered as the children of the certificate-person: they are nobody's children; they are *fili populi*. Indeed the case between the parishes of *New Windsor* and *White Waltham* is cited as being otherwise. That may therefore be looked into. N. B. Mr. *Chiffinch* (as *amicus curiæ*) said he remembered that the parish who gave the certificate was there holden to be concluded to say that the woman was not the man's wife; having certified and acknowledged that she was his wife. *Lee* chief justice. That may indeed be; and rightly enough. But I know of no case that considers bastards as the children of any one. Therefore I think the act cannot be construed into such a meaning; and that this removal cannot be maintained, which sends the bastard away from the place where born, under the notion of a child of the certificate-person. Mr. Justice *Chapple* concurred with the chief justice, both as to the certificate, and the construction of 8 & 9 W. 3, c. 30,—the word family, and the word children, in this act, must mean legitimate children: so that bastards are not even within the words of the act. Mr. Justice *Wright* and Mr. Justice *Denison* were of the same opinion, on both points. And the former said that a bastard is (in general) settled where it is born: therefore *partus non sequitur ventrem* in this case. And in the case of *New Windsor* and *White Waltham*, the court declared that illegitimate children were nobody's children. But *White Waltham* had concluded themselves from saying that they were illegitimate. Here is no fraud that appears; nor can we presume any: *odiosa non præsumuntur*. *Per Cur.*—Rule made absolute to quash both the orders. Both orders quashed.

Two justices made an order for the removal of *John Catton*, otherwise *A bastard is settled where born, though it be the child of a certificated woman.* *Speight*, and *Alice* his wife, and *Martha*, *Mary*, *Sarah* and *George* their children, from *Wyke* to *Hipperholm cum Brighouse* (both in the west riding of *Yorkshire*:) and, upon appeal, the sessions quashed that order. Case—*Sarah Catton*, the mother of *John Catton*, otherwise *Speight*, came, on 20th *March* 1715, from *Shelfe* to *Hipperholm cum Brighouse*, by certificate, being then pregnant with a bastard-child (the said *John Catton*, otherwise *Speight*:) ^{1 Bur. Sett. Ca. 264, Trin. 19 & 20 Geo. 2., and.}

(June 17,
1746) Rex v.
inhabitants of
Wyke.

and was afterwards, in *April* following, delivered of him at *Hipperholm*. The sessions, being of opinion that the said *John Gatton*, the pauper, by reason of the said certificate, did not gain a settlement in the said township of *Hipperholm cum Brighouse*, where he was born a bastard-child as afore-said, discharge the original order. The certificate itself was returned up, and undertakes that *Shelfe* shall provide for her and her child, whenever they should become chargeable, &c. On *Monday* the 2d of this month, a motion was made by Mr. *Fawkes*, to quash this order of sessions, upon this objection, that the justices at sessions had mistaken the law. In support whereof, he cited the case of *Rex v. the inhabitants of Helton*, Tr. 16 G. 2, B. R. (the preceding case.) Rule to shew cause. The counsel who shewed cause (Sir *Richard Lloyd* and Mr. *Weller*) insisted that *Shelfe* was the last legal place of settlement of the pauper. And they argued that this case is clearly distinguishable from that of *Helton* and *Lidlinch*. For here the woman is stated to be then pregnant with a bastard-child; and the certificate expressly undertakes to provide for her and her child: so that *Shelfe* plainly had this very child in contemplation; no other child being named or hinted at, and there being (as they said) a proper designation of this child. On the other side, it was urged that, by the express resolution in the case of *Lidlinch*, a bastard of a certificate-woman is settled where born; and fraud shall never be presumed, where it is not stated. The question therefore is whether the unborn bastard is to be considered as certificated. They acknowledged a certificate to be conclusive against the parish who gives it: but that, they said, is only in such points as are included in the certificate. This certificate undertaking to provide for her and her child must mean a child in being. If she had no other child; they should have stated the matter specially. Lord chief justice *Lee* and Mr. Justice *Wright* agreed that they must take the child referred to by the certificate to be a legitimate child then in being. And Mr. Justice *Foster* observed, (to which observation the other two agreed,) that it did not at all appear that the parish who gave the certificate knew that the woman was then with child. And he added that there were many instances where women were near their time without being known to be so. The counsel for *Hipperholm* proposed that it should go back to the sessions to be more fully stated. But their opponents said, and the court agreed, that could not be done without consent. And the counsel for *Wyke* refusing to consent—the court were of opinion that the rule must be made absolute. Order of sessions quashed: original order affirmed.

Children of a
father having
no settlement
must have the
settlement of
the mother.
2 Bur. Sett.
Ca. 482,

Two justices removed *Mary Elizabeth Coiffeau*, widow, and her three children, (*John*, aged six years, *Abraham*, aged upwards of four years, and *Mary*, near three years,) from the parish of *St. Matthew Bethnal Green* to the precinct of *St. Katharine*. The sessions, upon an appeal, discharged this order of the two justices; stating the case specially, upon their own order. Special case stated upon the order of sessions—*Elizabeth Tayler* was born in the said precinct of *St. Katharine*. She intermarried with *Edward Brazier*, whose settlement is not known. *Edward Brazier* died,

many

many years ago. *Elizabeth* afterwards intermarried with *Isaac Coiffeau*, who was a *Frenchman* and never gained any settlement in *England*. The said *Isaac Coiffeau* and *Elizabeth* lived, (both of them,) many years together in *Bethnal Green* parish: and *Abraham Coiffeau*, son of the said *Isaac Coiffeau* and of *Elizabeth Coiffeau* (heretofore the widow *Brazier*,) was born in *Bethnal Green* parish; and so was his wife *Mary*, (the pauper,) the daughter of *Peter Dormer*. *Abraham Coiffeau* and *Mary* his wife both lived in *Bethnal Green* parish: but neither of them gained any settlement in their own right, subsequent to what they might gain by being both born in *Bethnal Green* parish. *Peter Dormer*, the father of *Mary Coiffeau* the pauper, was born in, and served his apprenticeship in the parish of *St. Leonard Shoreditch*. The sessions, upon consideration of the premises, allow of the appeal, and discharge the order of the two justices. Note—The original order of two justices is to remove *Eliz. Coiffeau*, widow: but the *certiorari* calls them orders concerning the settlement of *Mary Coiffeau*, widow of *Abraham Coiffeau* deceased; and the order of sessions describes the order of two justices in the same manner. And it should be *Mary*. The short of the case is, that *Mary Coiffeau* the pauper, who was born in *St. Matthew's Bethnal Green*, of a father settled in *St. Leonard's Shoreditch*, became the wife of *Abraham Coiffeau*, born in *St. Matthew's Bethnal Green*; but son of a father who had no settlement at all, and of a mother stated to have been born in *St. Katharine's*: and the children are the children of the said *Abraham Coiffeau* by this *Mary Coiffeau*. The question was, whether *Mary* and her children are settled in *St. Katharine's*, or not. The objection which had been taken to the order of sessions, by *Mr. Stowe*, upon moving to quash it, was, that the settlement of the ancestor shall here take place of the settlement by birth: and he treated this as a derivative settlement. *Mr. Serj. Hayward* and *Mr. Gould* (for the precinct of *St. Katharine*) shewed cause against quashing the order of sessions. They argued that the accidental settlement (that is, the settlement by birth) of the child itself ought clearly to take place of the accidental settlement of the grandmother or any other ancestor. Settlements were never yet carried higher, they said, than to the immediate parent. And till the case of *Everfley Blackwater v. St. Giles's Reading*, (2 *ld. Raym.* 1332, and 1 *Strange* 580, *S. C. H. 10 G. 2, B. R.*) a child could not be removed even to his own father's settlement, after the death of the father. But if it be carried higher than the immediate parent, where shall the line be drawn? The confusion would be infinite. The place of * birth is not the settlement of any legitimate child: but only of an illegitimate one. And here, the settlement of this grandmother is only presumed, from its being the place of her birth, to be the place of her settlement. Whereas *Mary Coiffeau* had an acquired settlement in *St. Leonard's Shoreditch*, by her father serving his apprenticeship there. Here is no settlement in *St. Katharine's*, either acquired or derivative. *Mr. Norton* and *Mr. Stowe contra*. All settlements are equal; whether by birth, or acquired. There is no limitation, as to settlements. Birth, though *prima facie* a settlement, is not a settlement for a legitimate child,

Mich. 33.
Geo. 2, (Nov.
17, 1759)
Rex v. inhab-
itants of St.
Mat hew Beth-
nal Green.

* See 2 Salk.
528, inhab. of
Cumner v.
Milton, Tr.
1 An. B. R.

where the settlement of the parent can be shewn : it is only so, till a better appears ; as the case of *Eversley Blackwater* proves. The child's settlement shall relate to what was the father's at the time when the son left his father's family ; and shall not follow the settlement of its mother, if the settlement of its father can be found. But *Abraham Coiffeau*, the father, had no settlement at all ; nor his father, *Isaac Coiffeau*. It was necessary therefore to have recourse to *Abraham Coiffeau's* mother's settlement ; which is sufficiently stated to be in *St. Katharine's* where she was born ; as nothing to the contrary appears : for birth is a settlement, *prima facie*. The settlement of *Mary Coiffeau*, daughter of *Peter Dormer*, is lost in her husband's settlement ; and his settlement, as son of his mother, is found to be in the precinct of *St. Katharine's*. So that her father's settlement is out of the case. Lord *Mansfield*—There is no difference between an acquired and a derivative settlement. The father's settlement is the settlement of the children. The father was, here, the son of a foreigner who never gained any settlement, and of *Elizabeth Taylor*, who was born in *St. Katharine's*. Upon this order, as stated, it must be taken that *St. Katharine's*, where *Eliz. Taylor* was born, was the place of her settlement. Consequently, *Abraham Coiffeau* her son was legally settled there. Mr. Justice *Denison* was clear in this last point,—That it must be taken upon this order stating *Eliz. Taylor* to have been born in *St. Katharine's*, that she was settled there. And he saw no reason for any distinction between deriving a settlement from an immediate father, or from a grandfather. Mr. Justice *Foster* concurred—It is a common case, that if the father's settlement cannot be found, you go back to the grandfather. *Mary Coiffeau's* settlement is out of the case ; for her settlement was that of her husband. There is no distinction between an acquired settlement and a derivative one : all paupers must be sent to some place or other, to accomplish the end of the acts relating to the settlements of poor persons. Mr. Justice *Wilmot* was clear in this case, if it must be taken for granted that *Eliz. Taylor* must be considered upon this order, as settled where she was born ; of which he said he had some doubt at first ; but was now clear that it ought to be so taken. The children are always to follow the settlement of their father, if it can be known : and if it can be known, then the mother's settlement is quite out of the case. Birth gives even a legitimate child a settlement, if the parents of it had none. *Abraham Coiffeau's* settlement must follow the settlement of his father, if his father had any : but it could not follow his father's settlement in the present case ; because his father had none. But his mother had one, (in *St. Katharine's*). Therefore, as his father had none at all, (being a *Frenchman* who had never gained any,) his settlement was in *St. Katharine's*, where his mother was settled. There is no merit in a settlement : it depends upon positive law. Therefore there is no difference between an acquired, and a derivative settlement. And the positive law in these cases of settlements, is that the child's settlement follows that of its father, if the father's can be found ; and that no recourse shall be had to the mother's settlement, till that of the father can be traced no further. But in the present case, *Abraham's* father had none ; and there-
fore

fore his mother's was to be inquired into. And accordingly, the settlement of *Abraham Coiffeau* is traced up to his mother *Eliz. Taylor's* settlement in *St. Katharine's*: which is therefore the settlement of *Abraham's* wife and children. *Per Cur.* unanimously—Order of sessions quashed: original order affirmed.

An order of sessions, made upon appeal from an order of two justices adjudged the settlement of *Jacob Maile*, an infant of nine years of age, not to be in *St. Clement's*, but in *St. Giles's*, (to the former of which parishes the two justices had removed him from the latter) upon this case stated; viz. his father's settlement could not be discovered: but his mother had formerly gained a settlement by service in the parish of *St. Clement Danes*. This was her last settlement before her marriage. After her husband *Maile's* death, she married a second husband, *John Simcock*, who was settled in *St. Giles's in the Fields*. The sessions quashed the original order, which removed the infant-pauper from *St. Giles's* to *St. Clement Danes*. In *Trinity* term last (1732, 5 and 6 G. 2,) a motion was made to quash this order of sessions. And serjeant *Baines*, who moved it, cited the case of *Cummer* and *Milton*, 2 *Salk.* 528, where Mr. *J. Powell* said that, if a widow, having children, under seven years old, marries a man of another parish, the children shall go with the mother for nurture; but after seven years of age, they shall be sent back to the parish where the father was settled. Afterwards, in the same term, cause was shewn by serjeant *Corbet* against quashing this order of sessions. He argued, that the child ought to be settled where the mother is, by her marriage, settled. He cited the case of *St. George's Southwark* and *St. Katharine's, Michaelmas* 1714, and also the case of *Paulspury* and *Woodend, Hilary* 1726, where a widow gained a settlement by being admitted into a small copyhold; and it was adjudged, that she having gained such a settlement, her child followed her settlement. Vide *Sessions Cases*, edition 1750, vol 1, no. 116, and 2 lord *Raymond* 1743. *Cur.* In those cases the woman had gained a settlement in her own right: whereas, here, she gains it not in her own right, but in right of her husband. Rule enlarged. In this term, it came on again: and in answer to the objection, that the child ought to be sent to the last settlement of the mother before her marriage, the same cases of *St. George* and *St. Katharine's* and *Paulspury* and *Woodend* were cited, to prove that after the death of the father, the children shall be removed to the new-gained settlement of the mother. The counsel on the other side agreed, that where a woman has a settlement of her own, the children shall go to the last of such of her own settlements: but her last settlement in the present case is not acquired in her own right; and therefore is not within that rule. In the case of *Paulspury*, a copyhold in *Paulspury* descended to the widow; and the child removed with her, as part of her family: and besides, that was in her own right. So in the case of *St. George's* and *St. Katharine's*, the child went as part of the family of the wife. In the case of *Cummer* and *Milton* (2 *Salk.* 528,) *Powell J.* laid it down for law, that the mother cannot gain a settlement for her children

Children by a former husband do not acquire the settlement of the second husband. 1 Bur. Sett. Ca. 2. Trin. 6 & 7 Geo. 2. Rex v. inhabitants of St. Giles's in the Fields.

See Sessions Cases, vol. 1, No. 67, and 2 lord Raym. 1474.

by a former husband in the parish where her second husband is settled; being under coverture, and having a settlement there herself only as part of her husband's family, from whom she cannot be severed: and no one said any thing to the contrary of what he so laid down. 1 *Salk.* 482, pl. 35, *Anonymous*. If a man settled at *A.* marries a poor woman who is settled at *B.* having children by a former husband, his wife shall be removed with him to *A.*; but her children, such of them as are above seven years old, shall not be removed. (Those under seven years of age shall indeed be removed; but that only for nurture: for they shall be kept at the charge of the other parish.) Mr. J. *Probyn*. Where the father has a settlement and dies, and the children under seven years of age are removed with the mother, it is for nurture only: and in such case, the children shall at the age of seven be removed back to the place of the father's last settlement. By the second marriage of this woman, she has acquired a settlement in *St. Giles's*; and consequently her settlement in *St. Clement's* is gone: and it seems that the son must be sent to the place where the mother is settled at the time of the order made. Mr. J. *Lee*—I think the

N. B. This is the same case as that in *Salk.* 482, pl. 35, (which is there anonymous.) See also *Cartbew*, 279, 280, between the inhabitants of *Shermanbury* and *Bolney*, S. P. accord.

question has been determined. In a case in *Cartbew* 449, between the parishes of *Wangford* and *Brandon*, the fact was, that three poor men of *Wangford* came into the parish of *Brandon*, and there married with three poor widows of *Brandon*, who received relief, &c. each of which widows had children by their former husbands; (some under seven, some above seven:) and it was holden that the children did not gain a settlement in *Wangford*, nor were removable thither, to charge that parish. As to the nurse-children, they indeed might be sent thither for nurture only: yet still the parish of *Brandon* must relieve them there, and not the parish of *Wangford*. But the children above the age of seven years ought not to be removed at all; being settled inhabitants in the parish of *Brandon*. And the removal of the mother shall have no influence on the settlement of their children. Mr. J. *Page* thought as Mr. Justice *Lee* did; and agreed that wherever children are sent for nurture, the charge is to be paid by the parish where they are legally settled. However, this case was again adjourned, for the present. But upon the last day of this term, Mr. J. *Page* and Mr. J. *Lee* were clear, upon the case in *Cartbew*, (which, they said, they had again particularly looked into:) but as Mr. J. *Probyn* (who was now absent) had, when present, been of another opinion; they at first adjourned it again: but afterwards they declared that, they were thoroughly satisfied; and therefore quashed the order of sessions. The rule was this: *Per Cur.* It is ordered that the order of sessions made in this cause for quashing an original order made in the same cause, for the removal of one *Jacob Maile* from the parish of *St. Giles in the Fields* in the said county to the parish of *St. Clement Danes* in the county aforesaid, be quashed for the insufficiency thereof; and that the said original order be affirmed.

Children are settled where the father is,

Two justices made an order for the removal of *John Moes*, otherwise *Mason*, *Mary*, his wife, *Mary*, *Elizabeth*, *John*, *Thomas*, *Sarah*, and *Hannah*.

Hannah, their children, from *Stockland* in *Devonshire*, to the parish of *Chardland* in the county of *Somerset*: and the sessions, upon appeal, quashed that order. The special case stated was this—*John Moes* and *Elizabeth Mason*, the father and mother of the first named pauper, being both resident in the parish of *Chardland*, about the year 1723 or 1724, went from thence together, declaring they were going to be married; and soon returned, declaring they had been married; and from thenceforward cohabited as man and wife for the space of about thirty years, and until the death of the said *Elizabeth*. The first named pauper was born in the said parish of *Chardland* in the year 1725; and there baptized, and his baptism registered as the son of *John* and *Elizabeth Moes*. The said *John* and *Elizabeth*, for some years before the death of the said *Elizabeth*, removed from the said parish of *Chardland*, into the said parish of *Stockland*, and there acquired a settlement by renting a farm of 50*l.* a year value; which the said *John* still continues to rent and occupy. They carried with them, from *Chardland* to *Stockland*, the said pauper their son; who there married, and had issue the other paupers before-mentioned: and neither of them appeared to have done any act to gain a settlement. Whereupon, the settlement of the said paupers appeared to depend on the question whether the said *John* and *Elizabeth*, the father and mother of the first named pauper, were to be considered as husband and wife at the time of his birth. Upon which, it was contended on behalf of the said parish of *Stockland*, that the said *John* and *Elizabeth* were never married; or if they were, that the said *Elizabeth* had a former husband then living. Concerning which, several witnesses having been examined on both sides; on the part of the said parish of *Stockland*, the said *John Moes* the father was called as a witness in order (as was suggested) to deny the fact of any marriage between himself and the said *Elizabeth*, and to prove that the supposed other husband was then living. But it being objected, on behalf of the said parish of *Chardland*, that the said *John Moes* ought not to be received to give his testimony; the court (of sessions) was of that opinion: and the said witness was not received. Now upon consideration of the evidence before the court (of sessions,) and hearing what hath been alledged by the counsel on both sides, this court (the sessions) is of opinion that the said *John Moes* and *Elizabeth Mason* are sufficiently proved to have been lawfully married at the time of the birth of their said son; and that the settlement of the said paupers is in the said parish of *Stockland*. They therefore order the said order of the two justices to be discharged: and they order the churchwardens and overseers of *Stockland* to pay to those of *Chardland* the sum of 1*l.* 8*s.* for the maintenance of the paupers from the time of the removal to that time. On *Wednesday* the 16th instant, Mr. *Glynn* moved to quash this order of sessions, and to affirm the original order. His objection was, that the sessions ought to have admitted the father to give evidence of his never having been lawfully married. To prove which, he cited a case of *St. Peter's* in *Worcestershire* and *Old Swinford*, P. 8 G. 2, B. R. But lord *Mansfield* seemed to think that thirty years cohabitation as man and wife was sufficient proof to the justices to found an order of removal upon.

after 30 years
cohabitation
with the mother;
though their marriage
was doubted.
2 Bur. Sett.
Ca. 508, Trin.
2 Geo. 3,
(June 30,
1762) Rex v.
inhabitants of
Stockland.

upon. However, a rule was made to shew cause. But on the last day of this term, Mr. Glynn gave up his objection; and, by consent, the order of sessions was affirmed: and the recognizance discharged.

Children have
no settlement
in a place
where the fa-
ther purchased
an estate for
less than 30l.
though the fa-
ther himself
be irremov-
able so long
as he inhabits
the purchased
premises. 2
Bur. Sett. Ca.
516, Ill. 4
Geo. 3. (Jan.
31st, 1764.)
Rex. v. inha-
bitants of Sal-
ford.

On *Wednesday 15th June 1763*, Mr. Morton shewed cause why an order of sessions quashing an order of two justices made for the removal of *Peter White* the younger and *Mary* his wife from the parish of *Salford* in the county of *Oxford* to the hamlet of *Over Norton* in the parish of *Chipping Norton* in the same county, should not be quashed; and why the said original order should not be affirmed. The rule to shew cause had been obtained in *Easter* term last. The case stated by the sessions, on the appeal, was as follows—That it appears to them, that *Peter White*, the father of the pauper, being settled in *Over Norton*, in the year 1726, for the consideration of 29l. purchased a tenement in the parish of *Salford*, of one *John Lardener*, whose wife was seized of the inheritance in fee simple of the said tenement, but never joined with her husband in conveying it, nor had *Lardener* her husband any estate in the said tenement but in right of his said wife; and his said wife survived him, and died about ten years after him. *Lardener*, the husband, died thirty years ago: [this order of sessions was made in *November 1762*.] And *Peter White*, the pauper's father, has lived in and possessed uninterruptedly the said tenement ever since he so purchased it, and still lives there: and his son, the pauper, was born there, in or about the year 1730, and lived with his father as part of his family in the said purchased tenement till within these eight years; when the said pauper married, and left his father's family, and lived in a separate tenement in *Salford* aforesaid, but never gained any settlement but what he derived from his said father. It is therefore ordered by the court (of sessions) that the order made by the said two justices of the peace be and is hereby discharged. See *stat. 9 Geo. 1, c. 7, sect. 5, in p. 389*. Mr. Morton argued on behalf of the hamlet of *Over Norton*, that this is a derivative settlement in the son; and he must be sent to that place which was the place of his father's settlement at the time of his son's removal. To prove this, he cited 1 Sir *John Strange* 580, between the parishes of *St. Giles* in *Reading*, and *Eversley Blackwater* in *Berks*. The same point was determined in the case of *Cumner* and *Milton* *. The father's settlement depends on the words of 9 G. 1, c. 7, sect. 5. That the purchaser shall not gain a settlement for any longer time than he shall inhabit in such estate. Before this statute, any purchase would have made a settlement. And this is a settlement to the father, whilst he inhabits on the estate: and the son's derivative settlement must be the same place; as his father was irremovable from it, at the time when he was born. Mr. *Blackstone*, on the same side, in support of the order of sessions—The two justices did wrong: the pauper was not removable to *Over Norton*. The father's settlement at *Over Norton* may indeed possibly revive, if he quits his estate at *Salford*: but *non constat* that he ever will quit it; and *Salford* is his present settlement. He can not have two at once: nor can he be removed from his own against his will;

will; though he may voluntarily quit it, and then become removable to his former settlement at *Over Norton*. The son could have no settlement at *Over Norton*: for the father never had any there since the son was born. In the case of certificate persons, there is an express prohibition against certificate persons gaining any settlement: but the present case is not so. As to any hardship upon *Salford*—The statute has directed it to be thus: and the grievance is left upon the same foot as the statute found it. The statutes shall be construed strictly, when they narrow settlements; but liberally, when they extend them. Mr. *Carter*, on the same side. The father's settlement in *Over Norton* is, at least, suspended: and he was settled in *Salford*, before the birth of the son. Mr. Solicitor General (*Norton*) *contra*, argued against the sessions-order, and for the order of the two justices, which removed the paupers from *Salford*. The father is settled at *Over Norton*: he only inhabits at *Salford*. If the son leaves the father and gains no settlement for himself, he must be sent to the place which was the father's settlement at the time when the son left him. *Rex v. inhabitants of Widworthy*. The act of 9 G. 1, c. 30, *sect. 5*, does not give the purchaser any settlement at all, but only a personal privilege to be irremovable so long as he resides upon the very spot that he has purchased. This son has been emancipated eight years. But though his father's settlement at *Over Norton* be suspended, yet the father himself is liable to be removed thither as soon as he leaves the spot he has purchased: so that he himself has no settlement at *Salford*: and therefore he could give none to his son there. It would be hard to conclude *Salford* by a judgment that the pauper is settled there: which the confirming this order of sessions would do. The father came in under colour of a title, and not by design: this appears clearly upon the state of the case. The gentlemen agree that the father has no permanent settlement at *Salford*: how then can he communicate a settlement there to his son? that which he had at *Over Norton* is only suspended: it is his settlement, notwithstanding his purchase in *Salford* and his residence upon it. The court took time to advise. And Lord Mansfield took this occasion of observing upon the insufficiency of the present system of the poor laws. Here is an instance where the parties have been at much more expence than the keeping of the paupers would amount to: they have been before the two justices; then at the sessions; then before this court, after a removal of the orders by *certiorari*; and here are three counsel on one side: and all this, in a case where *Salford* have had the labour of the father for 36 years, and of the son from his birth till he became unable to labour. The court having considered the case, Lord Mansfield now delivered their resolution; after first stating the case, and then the statute of 9 G. 1, c. 7, *sect. 5*, and lastly the question, *viz.* Whether the paupers *Peter White* the younger and *Mary*, his wife ought to have remained in the parish of *Salford*, or have been removed from thence to the hamlet of *Over Norton*, as their last legal settlement. We are of opinion that no settlement of the father was gained in *Salford* by the purchase, but only during the time of his inhabiting the purchased premises. And this would have been equally the case,

case, if this act had never been made: for he could not have been removed from his own estate, though he had no settlement in the parish where it lay. So that the father's settlement (if it may be so called) in *Salford*, was only temporary, and did not extinguish his settlement at *Over Norton*. And the only settlement which the son could derive from his father was at *Over Norton*: for there could be no derivative settlement from the father at *Salford*; the father himself having no settlement there, but being only irremovable from his own estate; like the case between the parishes of *Wookey* and *Hitton Blewett*, in 1 Sir J. S. 476; where the pauper, being settled at *Hinton Blewett*, had an estate descended to him in *Wookey*; by which the court held that he gained no settlement in *Wookey*, though he could not be removed from thence if he should choose to go thither. It may be objected, that the father's settlement at *Salford*, though temporary only, might yet be communicated to the son so long as the father continued upon his new-purchased estate, which might remain during his life. But the answer to this is, that the father had, in truth no settlement at all at *Salford*, to communicate to his son; but was barely irremovable from thence, in the same manner as if the act of 9 G. 1. had never been made. This may be illustrated by a supposition that the son had not resided in *Salford*, but had gone to live in a third parish, and had there been likely to become chargeable; and the question had arisen whether he ought to be removed to *Salford*, or to *Over Norton*. He could not possibly, in such case, have been removed to *Salford*; because such removal would have been conclusive upon *Salford*, and he would remain settled there for ever: consequently, he must have been removed to *Over Norton*. Which shews that he can have acquired no settlement in *Salford* by virtue of his father's purchase, even during the time of his father's residence upon it. *Per cur.*—Order of sessions quashed: order of two justices affirmed.

Children of a certificate-man, who had gained a settlement by a purchase of 42l. value, having no settlement but what they derive from their father, are also settled there.

Two justices made an order for the removal of *Edward Maynard*, *Elizabeth* his wife, and *Edward*, *Thomas*, *John*, and *Anne* their children, from *Deddington* to *Duns Tew* in the county of *Oxford*: and the sessions, upon appeal, quashed this order. Note—Both these orders were quashed by consent on *Thursday* 11th *Feb.* 1741: and the order of sessions was sent back to be explained, in order that the court might have the merits before them. The amended order states—That *Richard Maynard* (the father of the said *Edward* who was removed with his wife and family by the said order) about the year 1719 had a certificate from *Duns Tew* to *Deddington*, which acknowledged the said *Richard Maynard* and *Anne* his wife and *Edward* their son to be inhabitants legally settled in *Duns Tew* aforesaid. And the said *Richard* and *Anne* and *Edward* their son lived in the said parish of *Deddington* many years, under the said certificate. It likewise appeared that during the time the said *Richard Maynard* and *Anne* his wife and *Edward* their son lived in the parish of *Deddington* aforesaid under the said certificate, the said *Richard* purchased a messuage or dwelling-house in the parish of *Deddington* aforesaid, which cost him 42l. and paid

paid for the same with his own money; and after the said purchase, dwelt in and inhabited the said messuage, as his own, for many years. And it further appeared that the said *Edward Maynard* his son lived with the said *Richard Maynard*, as part of his family, in the said purchased messuage, for many years as aforesaid, and never gained any settlement of his own. And it further appeared, that the said *Richard Maynard* sold the said messuage, five years ago; and that *Edward* the son had no interest therein, but became chargeable to the said parish of *Deddington*; and that *R. M.* the father is living; but has now no house or estate whatsoever in *Deddington* aforesaid. Wheretupon they discharge the order of the two justices. On Friday the 10th of this month, Sir *John Strange* moved to quash this order of sessions. His objection was, That a certificate man had been indeed adjudged lately to be capable of gaining a settlement for himself, by making a purchase: but it is carrying it too far, to say that a certificate-man's making a purchase in the parish shall fix his married son and his wife and all their children there too. Upon shewing cause now against quashing this order of sessions, the cases of *Rex v. the inhabitants of Stansfield*, in the last term, and *Rex v. the inhabitants of Burcleer* there cited, were insisted on; where it is settled that a certificate-person may gain a settlement by descent, devise or purchase. And the son gained a settlement also, they said, as being part of his father's family, and having never gained any settlement of his own. And they cited *Salk.* 427. *Hard's* case; and 521. *Cunner and Milton*; and *Rex v. inhabitants of St. Austin's, Bristol, Trin.* 8 *W.* 3. Lord Ch. Just. *Lec.*—The present case is no more than this.—A certificate was given, many years ago, to old *Richard* and his wife and *Edward* their son: afterwards, *Edward* marries, and has children. *Edward* and his wife and children are the present paupers. Old *Richard* made the purchase in *Deddington*. Now the act of 9 & 10 *W.* 3. c. 11, mentions the doubts that had arisen upon the former act; and then declares, that no settlement shall be gained by certificate-persons, except by the two methods therein specified. But I think the case of *Burcleer* and *East Woodhay* is an authority in the present case: that order has now been read; and it appears that a certificate man's wife's father surrendered to her a copyhold of 20s. *per annum*: and this was held a settlement, though it was, most plainly, neither of the two cases mentioned in the act. I remember the case.—Lord Chief Justice *Pratt* held it more than equivalent to renting 10*l.* a year. Mr. Justice *Eyre* held, that the construction of this act of 9 & 10 *W.* 3. should be agreeable to that of 13 & 14 *C.* 2, c. 12, upon which a man was irremovable from any tenement of his own, though it should be under 10*l.* a year. I do not see that the parish will be safer as to the notice arising from renting 10*l.* a year, than as to the notice arising from a purchase: there seems to be an equal notoriety in both cases. If this act was to be taken so strictly as has been contended for, a certificate-man could never gain a settlement, though he should purchase 5000*l.* a year. One of the other judges in that case of *Burcleer* observed indeed that it was not strictly to be considered as an act of the party himself; as he came in by the surrender to his wife. But all

the court held it not to be within the prohibition of the act of 9 & 10 W. 3. the man being irremovable as long as he had any thing of his own, though he should become actually chargeable to the parish. And if this should be so in the case of the old man *Richard Maynard*, then all his rights will be communicated to those that derive from him: for, after gaining a settlement by the purchase, the man himself is to be considered as an inhabitant of the parish in which he has gained it, in the same manner as if he had actually rented a tenement of 10*l.* a year, or executed an annual office: in which cases it must be agreed that legitimate children, who have no settlement of their own, must derive from their father's last legal settlement: for the settlements which the father might have previous to the last are out of the case, as much as if there never had been any such; they being extinguished by his gaining a new one, and having no more existence. Therefore the order of sessions is a right order; and the rule for quashing it must be discharged. Mr. Justice *Wright* and Mr. Justice *Denison* concurred with the Chief Justice in opinion, and expressed themselves to the same effect. Sir *John Strange* observed, That it was stated that the old man's settlement in *Deddington* was at an end: and therefore this might alter the case. But the court said, it did not; because it did not appear that he had gained any subsequent settlement. This was his last legal settlement: and it may very well remain so, though he has no estate there now. *Per cur.*—Order of sessions affirmed.

A child 13 years old removing with the mother as part of her family, after the father's death, and residing upon the lands of the mother, of 4*l.* per annum, gains a settlement under the mother, equally as it would under the father. 1 Bur. Sett. Ca. 49, Trin. 8 & 9 Geo. 2. (June 23d 1735) Rex. v. inhabitants of Barton Turfe, 1 Sess. Ca. No. 317. S. C.

Two justices removed *Deborough Man* from *Happisburgh* to *Barton Turfe*: and upon appeal, the sessions confirmed that order. The case specially stated on the order of sessions was this—*Thomas Man*, who married *Deborah* the daughter of *Francis Browne*, having then *Deborah* (the person removed) his daughter, of the age of ten years or thereabout, hired a farm of the yearly value of 100*l.* in *Barton Turfe*; which he occupied for about three years; and died there; and was overseer of the said parish. After his death, *Deborah* his wife removed from *Barton Turfe* to *Happisburgh*, and dwelt there in a house and occupied lands thereto belonging, of the yearly value of 4*l.* which house and lands were given to her by the will of *Francis Browne* her father: and *Deborah* her daughter, being then of the age of thirteen years, went and lived there with her mother as part of her family (there being then several other sons and children,) for about the space of one year and a half. The sessions, upon due consideration had of the premises, adjudged that the said *Deborah* the daughter did gain a legal settlement in *Barton Turfe*, in right of the said *Thomas Man* her father who was legally settled there; and, having once gained a legal settlement in *Barton Turfe*, could not afterward gain a subsequent legal settlement in *Happisburgh*, in right of the said *Deborah Man* her mother, who had a legal settlement there by dwelling in a house and occupying lands of which the inheritance was vested in her as aforesaid, by her going and living there with her said mother as a part of her family in manner aforesaid: and therefore they confirmed the order of the two justices. On *Wednesday* 14th of *May* in last term, a motion was made by Mr. *Preslon* to quash

quash these orders; and a rule to shew cause was then granted. On the second day of this term Mr. *Preston*, in support of the motion, cited the case between the parish of *St. George Southwark* and *St. Catharine's* near the *Tower*, Mich. 1 G. 1. which was upon an appeal from an order of two justices for removing *Lydia Cloyd*, *Elizabeth*, *Anne*, *Catharine*, *James* and *Samuel Cloyd*, from *St. George's Southwark* to *St. Catharine's*; and the sessions confirmed it. The order of sessions stated the case, That the said *L. C.* aged sixteen years, *E. C.* aged fourteen years, *A. C.* aged ten years, *C. C.* aged eight years, *J. C.* aged four years, and *S. C.* aged three years, were the sons and daughters of *John Cloyd* and *Lydia Cloyd*; which said *John Cloyd* the father, at the time of his death, was legally settled in the said parish of *St. Catharine*, and there died; and that none of the said children have by any act of their own gained any settlement different from the settlement of their father: but that after his death, the said *Lydia Cloyd* his widow and her said six children went to dwell at the said parish of *St. George Southwark*, where she took a house of 12*l.* a year, and lived in the same above four months, and paid the queen's tax, but never paid any rent to her landlord. The sessions were of opinion that the said six children, not having gained any legal settlement themselves, are settled at the said parish of *St. Catharine*, where their father *John Cloyd* had his last legal settlement, and gained no settlement by their living in the said house with their mother: therefore they dismissed the appeal, and confirmed the order of the two justices. But this court were of opinion, that the children gained a settlement in *St. George's Southwark*, their mother's parish. And, in the same term, both orders were quashed. (See this case in 2 *L. Raym.* 1474. *Fortescue* 218. *Foley* 291.) They also cited the case of *Rex v. the inhabitants of Woodend*, H. 13 G. 1. which was upon an appeal from an order of two justices made for the removal of *Elizabeth Buncher* from *Paulspury* to *Woodend*; and the sessions confirmed it. The order of sessions stated the case, that *John Buncher* rented a house and some closes at *Woodend*, about 30*l. per annum*, and inhabited the said house for several years, and died insolvent, and left a widow and one daughter, whose name is *Elizabeth Buncher*. The widow soon after removed to *Paulspury*, into a messuage or tenement of about 40*s. per annum* value and some lands about 10*l.* a year, that were her own estate for life, (both house and lands being copyhold;) and took her said daughter with her, then about the age of fourteen: and the daughter lived with the mother at *Paulspury* about two years in the said messuage or tenement; but the mother let the said lands to a tenant. The sessions were of opinion, That the said *Elizabeth Buncher* was settled at *Woodend*, the place of her father's settlement, and not at *Paulspury* where she lived with her said mother as aforesaid: and therefore they confirmed the order of the two justices. But this court held that the daughter gained a settlement in *Paulspury*, her mother's parish: and, in the same term, both these orders were quashed. (See 2 *Lord Raym.* 1473, S. C.) The counsel who argued in support of the order of sessions in the present case (Mr. *Lloyd*) urged, that it appears upon the order that *Deborah* the pauper was daughter in law to

Deborah the daughter of *F. Browne*, and not her own daughter: for the words are—*T. M.* who married *D.* having *then* a daughter. Now a mother in law is not bound to maintain the children of her husband by a former wife, either by nature or by law: (2 *Bulst.* 345.) and therefore her parish is not bound to do it. But *Mr. J. Probyn* and *Mr. J. Lee* held the word *then* to refer to the time of the hiring the farm: and they observed that the fact is explained by the subsequent expression “her daughter.” *Mr. Lloyd* argued that, if it be uncertain, the court will intend that the justices did right. *Mr. J. Probyn* persisted in his former interpretation. And then, he said, the case will be no more than this. Whether a widow removing with her children to her own estate, from whence she is irremovable, does or does not acquire a settlement for her children who remove with her as part of her family. And upon the cases cited, it is clear that she does. *Mr. J. Page* agreed to *Mr. Justice Probyn*’s construction of the words, as importing that *Deborah* the pauper was own daughter to *Deborah* the widow. *Mr. J. Lee* also concurred in it. But he observed that it appeared that the daughter was then ten years of age: which circumstance raised some doubt in him. It is certain, he said, that a settlement is gained equally in the case of a mother when the father is dead, as in the case of a father, by a legitimate child. But his doubt was upon the age of the child; which was ten or more, when the mother went into the parish of *Happisburgh*: whereas in the cases cited, the age of the children was under seven years. He said, he did not put it upon the foot of nurture; but doubted whether a child acquires a new settlement after that age, by going with the mother to the place of her settlement. *Mr. J. Probyn*.—It appears, upon the order of sessions, that this child had not acquired any settlement of her own. She must follow therefore the settlement either of her father or mother. Now in all those cases that have been mentioned, the child had the same settlement under the father as this child had: and this order (as now returned) prevents us from surmising that she gained any settlement of her own. Indeed if the child be under seven years of age, it must go with the mother for nurture: but that was not the present case. *Mr. J. Page*.—I think the age makes no difference. Indeed on account of nurture, a child under seven must go with its mother: but it remains settled at the father’s parish, and maintainable by that parish. But where the mother goes to an estate of her own, from which she is irremovable, a child may, after the father’s death, gain a settlement under the mother as well as it could under the father. *Mr. J. Lee*.—I always took it that in cases of legitimate children, the first thing to be inquired into was the settlement of the father: if that can not be found, then indeed the child’s settlement must follow the mother’s. But this being a derivative settlement from the father, and the child being of so advanced an age, I should think it ought not to be broken into and transferred to that of the mother, unless it appeared that the daughter had acquired a settlement of her own: I should be glad to look into it. It was ordered to stand over. Adjourned. It now came on again.—*Lord Hardwicke* said, He did not know

know any such difference between one kind of settlement and another: the father and mother's settlement is just the same case. In the case that has been cited between the parishes of *Paulspury* and *Woodend*, the child was thirteen or fourteen years of age. I think the orders must be quashed. Mr. J. Lee.—I never apprehended any difference between the case of the father and the mother; for, that is the very same, where a settlement is to be gained: but I thought that if the child was of sufficient age to gain a settlement, it might have been necessary that it should appear upon the order that no subsequent one had been gained by such child. In the case between the parishes of *St. George Southwark* and *St. Catharine* near the *Tower*, it is stated that the child had not gained any subsequent settlement. But in the case of *Paulspury v. Woodend*, it was not so stated, nor any thing one way or the other. I had a notion that it had been held necessary that this should appear; and upon looking into my notes, I find that it was so in *Trin. 12 Ann.* between the parishes of *Woburn* and *Woking*; where two children, the one twelve the other eight years old, were sent to the father's place of settlement as the place of their last legal settlement. An exception was taken that the children appearing to be of these ages, their father's settlement did not necessarily give them a settlement in the same place. And Lord Chief Justice *Parker* laid it down that where children are under seven years of age, the father's settlement is their settlement: but if they are above seven, then the law supposes that they may have gained a settlement for themselves, unless the contrary appears; and shall not therefore be taken for granted to be settled with the father. So that it seems such children above seven years old must be taken to have gained a subsequent settlement for themselves, unless the contrary appears. (See cases of settlement, pa. 17, No. 24, S. C. accord: but in *Poley*, pa. 315, S. C. is reported much less strong.) And in the case between the parishes of *Edgworth* and *Harrow*, in Queen *Anne's* time, *Parker*, Ch. J. held, that the settlement of children was gained not by inheritance, but by their being irremovable. (See S. C. in *Poley's Poor Laws*, pa. 294.) But the case of *Paulspury* and *Woodend* is directly contrary to the case of *Woburn*, and is exactly the same case with the present: for there the child was fourteen years of age; and it is not there stated that she had gained no other settlement. Therefore (though I have no note of that case) I am not for setting the question at large again. Lord *Hardwicke*.—I believe, in the case of *Harrow* and *Edgware*, it was said that there should be negative words that they had gained no other settlement. But it is going a great way to presume a settlement when none appears: and it is here sufficiently stated to be the place of the legal settlement of the child. Mr. J. *Froby*.—The derivative settlement of a child from his father is what he has a right to by inheritance. Lord *Hardwicke*.—If we go into presumptions, upon special orders, it will make them very uncertain. The latter resolutions are to be followed. Both orders quashed.

Settlement by Certificate.

Settlement
gained by cer-
tificate-man,
by renting a
wind-mill of
10l. per ann.
1 Bur. Sett.
Ca. 107, Trin.
10 & 11 Geo.
2, (June 27,
1737) Rex. v.
inhabitants of
Butley. 2
Stran. 1077,
1 Sess. Ca.
No. 320. S. C.

On Monday the 13th instant, a motion was made by Mr. *Lloyd*, to quash an order of sessions confirming an order of two justices made for removing *Thomas Chandler* and his wife and children from *Benball* to *Butley*. The order of sessions states—That *Thomas Chandler* the pauper came with a proper certificate from *Butley*, dated 2d April 1730; which he delivered to the officers of *Benball*. That he, some short time afterwards, took a lease of a windmill in *Benball*, from one *Thomas Green*, for the term of three years from *Michaelmas* 1730, at the yearly rent of 14*l.* and about the same time hired of *Thomas Mann* a cottage and a piece of land in *Benball*, by parol, to hold from *Michaelmas* 1730 for one year, and so from year to year so long as it should please both parties at the yearly rent of 3*l.* That the said *T. C.* entered upon the said mill, cottage and premises, and occupied the same for three years under the said leases, and paid all the rent himself: but he had a surety who engaged for the payment of the said rent for the wind-mill during the said three years. That after the expiration of the said three years, the said *T. C.* occupied the said mill for three years longer under a parol-agreement between the said *Thomas Green* and the said *T. C.* That the said *T. C.* should occupy the said mill at the said annual rent, so long as he should continue to pay the same: and that the said *T. Green* then did not require any surety for such payment. And during those last three years the said *T. C.* occupied another cottage in the said parish of *Benball*, which he hired of *John French* as tenant at will at the yearly rent of 3*l.* 2*s.* 6*d.* And whereas it appears that the said *T. C.* has not any otherwise acquired a legal settlement in *Benball*, now upon debate of the matter, and hearing counsel on both sides, it is ordered by this court (the sessions) that the said recited order of the said two justices be and is hereby confirmed. A rule was made to shew cause. On shewing cause, the counsel for the parish of *Benball* argued that he gained no settlement there; for that a wind-mill is not such a tenement as a man can settle in: and yet they admitted it had been determined that a water-mill does gain a settlement. (See 1 *Salk.* 536. *Inter Evelyn* parish and *Rentcomb.*) But they said it was plain that this wind-mill was not a tenement proper to live in; because the man hired a distinct cottage, to reside in. They further urged, that as he was forced to give security for the payment of the rent, whilst he held it under the lease, the parish could not consider him as a man of such substance as not likely to become chargeable: and therefore the credit of an ability to rent 10*l.* per annum, which is the foundation of the settlement, fails in the present case. Mr. *Lloyd contra*, said that there was no difference between a wind-mill and a water mill: and that the case of *Cranley* and *St. Mary Guilford*, in 1 *Str.* 502, was a renting of a mill, in general. And it was not necessary to lie in the mill: it was enough that he lived in the cottage which he rented in the same parish. And the giving security to pay the rent don't affect the settlement. He paid it all, himself. Mr. *J.*

Page said he saw no distinction between a wind-mill and a water-mill. The miller often inhabits the wind-mill. But whether it be a dwelling or no, yet still it is a tenement: and he resided in the same parish. The great objection arises from his giving security for the rent. But the officers of the parish have nothing to do to look into that. And at this rate, a much greater rent might be insufficient to gain a settlement; though the act requires no more than 10*l.* a year. It is the credit of the taking a tenement of such a value, that is the point. Suppose a man had borrowed money to stock his tenements: has any body any thing to do with that? The visible credit is the grand point. *Mr. J. Probyn*.—The court has held a water-mill to be as good a tenement as land: and it requires as good a stock as land does. A mill was therefore holden to be a tenement, not upon the criticism, but upon the reality. And I see no difference between a wind-mill and a water-mill: the stock, the credit, are the same. And we cannot take notice whether it had a house belonging to it, or not. Indeed, if the man had not lived in the parish, it would not have done: but he lived in the same parish, and rented 17*l.* a year in it. *Mr. Justice Chapple* was of the same opinion. There is no difference between one kind of mill and the other. The credit is the point upon which it turns: and the value of the rent is the thing to be considered. Both orders were quashed.

Two justices remove *Jonathan Barrat*, *Mary* his wife, *Elizabeth*, *John*, *Settlement*¹ and *Mary* their children, from the township of *Stansfield* in the parish of *Heptonstall* in the west riding of *Yorkshire*, to the township of *Spotland* in the parish of *Rockdale* in the county palatine of *Lancaster*; which they adjudge to be the last place of the lawful settlement of the said *Jonathan Barrat*. This original order is dated 12th *April* 1742. The *Pontefract* sessions held 27th *April* 15 *G. 2*; upon an appeal by *Spotland*, order the said appeal to be respited to the next general quarter-sessions of the peace to be holden by adjournment at *Bradford* in and for the said riding; and that the church-wardens and overseers of the poor of *Stansfield* aforesaid do, on notice of this order, pay or cause to be paid to the church wardens and overseers of the poor of *Spotland* aforesaid the sum of four guineas for costs of the said appeal. And at the general quarter-sessions of the peace of the lord the king holden at *Skipton*, in and for the said riding, on *Tuesday* the 13th day of *July* 16 *G. 2*, before, &c. that same sessions of the peace was adjourned, by the justices last named and others their fellows as aforesaid, until *Thursday* the 15th day of the said month of *July* in the year aforesaid, at ten of the clock in the forenoon of the same day, to be holden at *Bradford*, in and for the riding aforesaid, to do further as the court there shall consider, &c. And on the said *Thursday* the 15th day of *July* aforesaid, the same general quarter-sessions of the peace was holden by the adjournment aforesaid at *Bradford* aforesaid, in and for the said riding, before, &c. At which said general quarter-sessions of the peace, continued and holden by the justices last named at *Bradford* aforesaid in and for the said riding, on the said *Thursday* the 15th day of *July* aforesaid in the year aforesaid, before the justices last named as aforesaid, it was ordered as follows,

gained by certificate-man by making a purchase of 47*l.* value.
1 *Bor. Sett.*
Ca. 205, *East.*
16 *Geo. 2.*
(*May* 16,
1743) *Rex v.*
inhabitants of
Stanfield. 1
Sess. Ca. No.
316. *S. C.*

1802. (Settlement by Certificate.)

follows, to wit—Upon the further and full hearing of the appeal, &c. it appears to this court, that *Jonathan Barrat*, the party removed, being an inhabitant legally settled in *Stansfield*, came into the township of *Spotland* in the parish of *Rockdale* and county of *Lancaster* by virtue of a certificate. That by deed not indented, bearing date the 4th day of *February* 1728, made between *Richard Ashworth* of *Tongue-End* in the parish of *Rockdale* afore said yeoman of the one part, and the said *Jonathan Barrat* (by the name and addition of, &c.) on the other part, the said *R. A.* did demise set and to farm let unto the said *J. B.* his heirs executors administrators and assigns twenty square yards of land in *Whitworth* in the said parish, to hold to the said *J. B.* his executors administrators and assigns for the term of 999 years, under the reserved rent of 1 s. a year. By virtue whereof, the said *J. B.* entered to the said premises, and afterwards erected a house and other out-buildings upon the same; and by indenture bearing date the 9th day of *July* 1730, made between the said *Jonathan Barrat* of the one part and *John Horsfall* of *Hodley*, in *Langfield* in the county of *York* yeoman of the other part, the said *Jonathan Barrat*, in consideration of 16 l. 10 s. paid to him by the said *John Horsfall*, bargained sold set over and assigned the said premises with the buildings thereupon erected, unto said *J. H.* his heirs executors administrators and assigns; during the residue of the said term of 999 years; to hold to the said *J. H.* his heirs and assigns: by virtue of which said assignment, he the said *J. H.* entered to the said premises. And afterwards, by indenture bearing date the 16th day of *September* 1731, made between the said *Richard Ashworth* of the one part and the said *J. H.* of the other part, the said *R. A.* leased set and to farm let to the said *J. H.* his heirs executors administrators and assigns the said twenty square yards of land before granted by him to the said *J. B.* and also, &c. and also, &c. to hold to the said *J. H.* his heirs executors administrators and assigns for the term of 999 years: by virtue of which grant, the said *John Horsfall* entered to the said premises. That afterwards, an uncle of the said *Jonathan Barrat* having died, and left some money to the said *J. B.* he thereupon applied himself to the said *J. Horsfall* in order to purchase the said premises by him the said *Jonathan Barret* before sold to the said *John Horsfall*, and also the said premises granted by the said *Richard Ashworth* by the deeds last above mentioned. Upon which, the said *J. H.* and he came to an agreement; and by indenture bearing date the 9th day of *July* 1736, made between the said *J. H.* of the one part and the said *J. B.* of the other part (reciting all the deeds before mentioned) the said *J. Horsfall*, in consideration of forty-seven pounds *bonâ fide* paid to him by the said *Jonathan Barret*, bargained sold assigned and set over unto the said *Jonathan Barret* his heirs and assigns all and singular the before-mentioned premises, to hold unto the said *J. B.* his heirs executors administrators and assigns during the residue of the said several terms of 999 years then to come. That the said premises all lie in the said township of *Spotland*; and at that time were worth the said sum of forty-seven pounds, and now are worth the sum of sixty-three pounds to be sold. By virtue of which grant, the said *J. B.* entered to the said premises, and inhabited upon the same for two or

three years then next following. That by indenture bearing date the 23d day of *May* 1738, the said *J. B.* assigned over the said premises to the above-named *J. H.* by way of mortgage, for the sum of 45*l.* That afterwards, the said *J. B.* was apprehended at *Manchester* in the county palatine of *Lancaster*, as a vagrant; and was sent from thence, with his family, by a pass* bearing date the 3d day of *April* 1742 (a copy whereof * See 13 G. 2. is hereunto annexed) to *Stansfield* in the county of *York*: to which pass, c. 24. sect. 7. no appeal† was made at the then next general quarter-sessions of the † See sect. 29. peace for the said county of *Lancaster*; but that the same pass was duly || See sect. 7. recorded there. That after he was so sent by the said pass as aforesaid, and before the quarter sessions next succeeding the date of the said pass, the said *J. B.* being poor and likely to become chargeable to the said township of *Stansfield*, was removed from *Stansfield* aforesaid to the town of *Spotland* aforesaid, by virtue of the order now in question between the said parties. Upon consideration whereof, this court (the sessions holden by adjournment at *Bradford* on 15th *July*) is of opinion that the last legal settlement of the said *Jonathan Barret* is in *Stansfield* aforesaid; and doth therefore order the said order of removal to be discharged. On *Saturday* 13th *November* 1742, Mr. *Fawkes* moved to quash these orders of sessions; and obtained a rule to shew cause why they should not be quashed. His exceptions to the order of sessions made at *Pontefract*, on 27th *April*, were—1st, That the appeal being given to the next quarter-sessions (by 13 & 14 C. 2, c. 12. sect. 2,) they ought to have entered into the merits of it themselves; and had no power to adjourn it at all. 2dly, That, at least, they should have adjourned it to the next original quarter sessions; but certainly could not adjourn it to a quarter-sessions to be holden by adjournment. 3dly, That they had no power to give costs of the appeal, without hearing it: the costs of an appeal must depend upon the determination of the merits of it. See 8 & 9 W. 3, c. 40, sect 3, in page 382. His 4th exception was to the last order of sessions, made at *Bradford* on the 15th of *July*; and went directly to the merits; viz. that their opinion and determination were wrong; for that *Jonathan Barret* had, by his purchase and residence upon it in *Spotland*, avoided his certificate, and gained a settlement there. On *Friday* 4th *Feb.* last, Mr. *Fawkes* moved to make his rule absolute for quashing these orders of sessions; and was supported by Sir *John Strange*. Mr. *Gundry*, on behalf of the township of *Spotland*, argued in defence of them; and insisted on two points; namely, the merits, or true place of settlement; and the not having appealed from the pass. 1st, The purchase did not gain a settlement for this certificate-man. For by 9 & 10 W. 3, c. 11, no person can gain a settlement by any act whatsoever, but by renting 10*l.* a year, or by executing some annual office in the parish. Now, voluntary purchasing of a leasehold estate of 999 years duration, for 47*l.* is not within either of these exceptions. It is manifestly not within the latter: and it can't be included in the expressions taking a lease of a tenement. 2dly, The justices could not make this order of removal during the time for appealing from the pass. If the settlement of this man was not in *Stansfield*, they should have appealed

from the pass; and not have sent them by an original order, when the pass remained unappealed from. He also observed and objected, that in this original order, neither the ages of the children are set forth; nor is there any adjudication with respect to their settlement. Lord chief justice *Lee* said he did not well see what the court was to do upon this case. For, the order of sessions states the merits, and states the pass unappealed from, and their opinion that the man's settlement was at *Stansfield*, and then concludes to quash the order of the two justices; but does not specify for what reason, they are of opinion that his settlement was at *Stansfield*: it does not appear whether they founded their opinion upon the right of settlement, or upon the not appealing from the pass. As to the purchase—I do not know that 9 & 10 W. 3, has been taken so strictly as Mr. *Gundry* would suppose. A descent or a devise, and I believe a purchase too, have been determined to gain a settlement, (after forty days residence,) upon the foot of the person's not being removable from his own, and as not being an intruder within the meaning of 13 & 14 C. 2, c. 12. So that whenever a man has an interest of his own, though under 10*l.* a year, he shall not be removable by that statute. The present question turns indeed upon the construction of the certificate-act.*

9 & 10 W. 3,
c. 11.

Now though this person was a certificate man, yet if he had come to this by act of law, it would have gained him a settlement: and I believe it has been so determined in case of purchases too. I think, the same construction has been made upon this act, as upon that of 13 & 14 C. 2. As to the costs—The order of sessions made at *Pontefract* is wrong, as to that part of it, certainly. Mr. Justice *Wright* and Mr. Justice *Denison* concurred. They thought it had been determined that a certificate-man may gain a settlement by purchase, in *P. 5 G. 1, B. R. Rex v. the inhabitants of Burcleer*. They thought the *Pontefract* order well enough as to the adjournment; but bad, as to the costs. Mr. Justice *Denison* said, the places of holding adjourned sessions were very well known in *Yorkshire*. Lord chief justice *Lee* said.—Before 9 G. 1, c. 7, every body that came into a parish and made any purchase whatsoever, was irremovable. We seem to think the sessions wrong, and the two justices right, as to the merits. And if so, then it will stand upon the question about the validity of the order of two justices made during the time the pass remained unappealed from, and before the quarter-sessions next after its date. *Per Cur.* The original order of two justices was quashed as to the children. (See No. 26, 29, 45, 57, 63, 70.) And the order of the *Pontefract* sessions was quashed, as to the costs. As to the rest—It was ordered to stand over, for the opinion of the court. Lord chief justice *Lee* now delivered their opinion, as follows. This case stands for our opinion on the merits only, which consist of two parts, viz. 1st, The right of the settlement, and 2dly The conclusiveness of the pass remaining unappealed from. Now, as to the right of the settlement—We before declared that a certificate-man does gain a settlement by becoming irremovable, and so continuing for forty days: and so was the case of *Rex v. the inhabitants of Burcleer, P. 5 G. 1, B. R.* (See that case, in *Sir John Strange* 163, 164.) 2dly, As

to the pass—Upon looking into the orders, I do not see that the question does necessarily and properly arise. It is not a pass whereby the man was sent to *Stansfield* as the place of his last legal settlement; but only, generally, to send him thither. Indeed the order of sessions refers to a copy of a pass, to the order annexed: by which copy indeed, (when it comes to be looked into) it does appear that he was sent to *Stansfield* as the place of his last legal settlement. But the *Bradford* justices do not adjudge that *Stansfield* was really so: and we cannot take notice of this copy of a pass annexed to the order; which is no part of the record. Therefore,

I say, the question does not seem quite properly to arise, whether a pass †
unappealed from, is to have the same effect as an order of two ‡ justices
unappealed from. We have, however, considered that question, whether
by the late act of 13 G. 2, c. 24, a pass unappealed from be as conclusive
as an order of two justices unappealed from: and we are of opinion that
this act of parliament is not to receive such construction, or be considered
in such a manner, as to put a pass upon the foot of an order of two justices
in this respect. In case of an order of two justices, two other justices
cannot make a different order; because the authority of each two would
be equal; and therefore it would be a clashing of the same authority.
But that does not seem to be the present case at all. This act of parlia-
ment of 13 G. 2, was made only in order to secure vagabonds, and to
send them to their former places of settlement or birth, if to be found; if
not, then to the place from whence they came: and it operates upon such
as are actually vagabonds. But the act of 13 & 14 C. 2, c. 12, was
made with a view to prevent vagabonds: and therefore it gave power to
fix them in their last legal place of settlement. But the authorities given
by these two acts are very different. On that act of 13 & 14 C. 2, c. 12,
though complaint may be made to one justice; yet one justice cannot
act, singly: here one single justice may act. So there is a difference too
as to the manner of sending them. Upon that act, the removal is to be
at the expence of the parish: here, of the county. Another thing that
makes one believe the parliament did not intend to put this pass warrant
signed by a single justice, upon the foot of an order made by two justices,
is, that though the reason would be the same, yet the same care is not taken
as to the provision on appeal: for upon an appeal from an order of two jus-
tices, there is a provision for costs; but none on this act. Here are no
costs given on appeal; yet that provision would be just as reasonable as
in the case of an order of two justices, if it had been intended to be put
upon the same foot in all other respects: but upon appeals from orders of
two justices, costs are ‖ payable. Now it would be something extraordi-
nary, and cannot well be conceived to have been the sense of the legisla-
ture, that a person's being sent by one justice of peace shall have the same
effect as if sent by two; and yet that there should not be the same remedy
upon an appeal. Therefore we are of opinion that this act made in rela-
tion to vagrants and the manner of passing them, was in a different view
from that which was calculated for the fixing of settlements: and that
this act is only calculated to convey them to their settlement, if it can

† See 17 G. 2, c. 5, §. 7, for the nature and form of a modern pass.

‡ One justice only is sufficient to sign a pass.

‖ Not by 13 & 14 C. 2, but by subsequent statutes. See 8 & 9 W. 3, c. 30, §. 3, in page 384.

be found; or (in cases where their settlement is not found) only to remove them to the place of their birth, or the abode of their parents, or where last found begging, &c. there to be provided for according to law: and that provision is, to keep them till their last legal settlement can be discovered, but no longer; and then they will be subject to a removal (by virtue of the former act) to their place of last legal settlement; on which removal an appeal will lie, subject to costs. And we hold that the settlement at present in question is at *Spotland*, where the certificate-man made his purchase. Therefore the order of sessions must be quashed. Order of sessions (made for discharging the original order) quashed; original order affirmed.

Children of a certificate-man cannot gain a settlement but by renting 10 l. a year or executing an annual office in the parish. 1 Bur. Sett. Ca. 182, East. 15 Geo. 2, (May 21, 1742) Rex v. inhabitants of Sherborne. 2 Stran. 1165, 2 Sess. Ca. No. 203, S.C.

Two justices made an order for the removal of *George Eyres*, *Catharine* his wife, and *Elizabeth*, *James*, *Catharine*, *Mary*, *George* and *Robert*, their children, from *Sherborne* to *Thornford*, (both in *Dorsetshire*.) And the sessions, upon appeal, discharged this order. The order of sessions is as follows—Upon hearing the appeal of the inhabitants of *Thornford*, from the order of two justices for the removal of *George Eyres* (button-mold cutter) *Catharine* his wife, *Elizabeth*, *James*, *Catharine*, *Mary*, *George* and *Robert*, their children, from *Sherborne* to *Thornford* as the place of their last legal settlement, it appears unto this court, and this court doth adjudge it to be true, that *Humphrey Eyres*, father of the said *George* the pauper, was an inhabitant legally settled in *Thornford*; and that the said *H. E.* (who is still living) by and with a legal and proper certificate from *Thornford*, bearing date 30 March 1702, went into the parish of *Sherborne*, with his wife and family: by which certificate the said *H. E.* his wife and family were owned to be legal inhabitants of *Thornford*, and that they would receive and provide for them when they should become chargeable. That about two years after the said *H. E.* went into the said parish of *Sherborne*, his then wife died, and shortly after he married a second wife, the mother of the pauper *George Eyres*. That the pauper, about three years after such second marriage, was born in the parish of *Sherborne* whilst his father the said *H. E.* resided there under the said certificate. That when the pauper was about sixteen years of age and lived with his said father, as part of his family, the said *H. E.* the father hired one *Francis Pope* to cut button-molds for the said *H. E.* And during the time the said *Francis Pope* so worked with the said *H. E.* he the said *H. E.* the father and also the said *G. E.* the pauper (his son) agreed with the said *Francis Pope* that he the said *G. E.* the pauper should work with and serve the said *Francis Pope* for one year, at the making of button-molds; which business the said *G. E.* the pauper had never before been employed in: and the agreement was that the said pauper *G. E.* was to have nothing for his first month; for the second month, he was to have 1 s. a week; for the third month, 1 s. 6 d. a week; and for the rest of the year 2 s. a week. And the said *G. E.* the pauper received, from the said *F. Pope*, his wages accordingly, and applied them to his own use. And that the said *G. E.* the pauper so worked and served the said *F. Pope* for the whole year;

year; and one fortnight more, on account of his being lame within the said year; which the said *F. Pope* insisted on. And during the whole time the said *G. E.* the pauper worked and served as aforesaid with the said *F. Pope*, he lodged and dieted with his father the said *H. E.* in *Sherborne*. And the said *F. Pope* worked for no other person but the said *H. E.* And also during all the time aforesaid, the said *F. Pope* and *G. E.* the pauper worked at the said *H. E.*'s house: but the said *F. Pope* was a housekeeper and an inhabitant in the said parish of *Sherborne*. And that the last legal settlements of the wife and children of the said pauper *G. E.* depend upon the settlement of the said *Geo. Eyres*, upon the facts as above stated. Whereupon, &c. they discharge the order of the two justices. On *Tuesday 3d Feb. 1740*, a motion was made, by *Mr. Gundry*, to quash this order of sessions: for the settlement of *Humphry's* son *George* is clearly in *Thornford*, though he was born in *Sherborne*; because he was born under a certificate from *Thornford*: and the service in *Sherborne* is out of the case; because a certificate-person has but two ways to gain a settlement; viz. renting a tenement of the yearly value of 10*l.* or executing some annual office in the parish*. A rule was made to shew cause. Upon shewing * See 9 & 10 cause, on the 12th of the said month, *Mr. Lloyd* and *Mr. Denison* argued, ^{W. 3, c. 11,} on behalf of the parish of *Thornford*, that the son of a certificate man, ^{in page 383.} born after the certificate, and more especially as he was by an after-taken wife, was capable of gaining a settlement by service, in the parish to which his father came with a certificate: and that this was a good hiring and service, to gain him a settlement in *Sherborne*. The main difficulty with the court was about the capability of a child of a certificate-person to gain a settlement, by service: or, whether the child was not equally restrained as its parent was, to the two methods specified in 9 *W. 3, c. 11*. *Mr. Justice Wright* observed that the act of 8 & 9 *W. 3, c. 30*, does say though born in the parish, &c. but then it follows, generally, not having otherwise acquired a legal settlement there; which seems not to confine them to the two methods prescribed to the certificate-man himself. But then comes 9 & 10 *W. 3, c. 11*, which says that no person or persons whatsoever who come into any parish under a certificate shall be adjudged by any act whatsoever to gain a settlement unless by one of the two ways therein mentioned. Therefore I should think the method of service not to be sufficient. For the child, though born in the parish after the date of the certificate, is a certificate person under 8 & 9 *W. 3*, and 9 & 10 *W. 3*, recites that act at large; and the enacting clause of it is very short; but it is declaratory and explanatory; and therefore must include children born afterwards, notwithstanding the word "coming." The court, however, thought the matter deserved consideration as to this point. But they seemed satisfied that afterborn children were as much included in the certificate, as those who existed at the date of it: and they saw no objection to the present hiring and service, on supposition that the child of a certificate-person could acquire a settlement by this method. It was therefore ordered to stand over. This point was now mentioned again on *Friday 14th May 1742*: viz. whether the son of a certificate-person, born in the parish to which

which the father came by certificate, after the certificate, can gain a settlement otherwise than a certificate-person himself could. Lord chief justice *Lee*.—As to the point of this hiring and service—we held that sufficient before. As to the other question—it remained to be considered, upon the two acts of 8 & 9 *W. 3, c. 30*; and 9 & 10 *W. 3, c. 11*. Now the first of these acts gives power to remove children born after the certificate, when they become actually chargeable. But the latter act says no person or persons whatsoever who shall come into any parish by certificate shall be adjudged, by any act whatsoever, to have procured a legal settlement therein; unless he or they shall really and *bonâ fide* take a lease of a tenement of the yearly value of 10*l.* or shall execute some annual office in such parish (being legally placed in such office.) I should think this subsequent act to be only a direction by what acts settlements may be gained by persons who are in parishes under certificates. And this person does, by his birth, come by certificate into the parish of *Skerborne*. Mr. Justice *Wright* was strongly of the same opinion. *Per Cur.*—Rule to confirm the original order, and quash the order of sessions; *nisi causa*, in a week. At the end of the week (being *Friday 21st May*) Mr. *Lloyd* shewed cause, and urged that the explanatory act * related only to persons themselves, coming to reside in parishes with their families. There is a contradistinction expressed between the man himself coming by certificate, and his family. He said, this construction was reasonable; because it would be very hard that the children of certificate-persons should be excluded from gaining settlements in the same manner as other young persons might do. And he observed that the two methods of gaining settlements by certificate-persons mentioned in the act, *viz.* serving an annual office, or renting a tenement of 10*l.* a year, both relate only to adult persons: from whence he argued that their children were not meant to be included in the restriction. Mr. *Gundry, contra.*—The construction now advanced would make a difference, which the statute never intended, between children born before the certificate, and those born after it. The children are certificate-persons within the act, as well as the father: and though children may not at first be adult enough to serve offices or rent tenements; yet they may grow old enough in time. The children have all the advantages of certificate-persons; *viz.* to come without notice in writing, and to remain irremovable till they become actually chargeable. Mr. *Lloyd's* construction would be inconsistent. Lord chief justice *Lee* held the former act of 8 & 9 *W. 3, c. 30, sect. 1*, to extend not only to the certificate-man himself, but likewise to all his family and all his children, whether born before or after the certificate, coming into parishes. The second act declares what shall gain them a settlement in that parish to which they come by certificate; and restrains it to two methods only, which it specifies: and service is neither of these two methods to which it is restrained. Mr. Justice *Chapple* and Mr. Justice *Wright* concurred with the lord chief-justice. Mr. Justice *Denison* enlarged more upon the acts; and observed (and all the court agreed with him) that the certificate provided for the security of that parish only into which the certificate-persons came to reside by virtue of such

* 9 & 10 *W. 3, c. 11*. See page 383.

such certificate: but it did not exclude the children of a certificate-man from gaining settlements in other parishes, in the same manner as any body else might do. So that Mr. *Lloyd's* objection of the children of certificate-men being under particular hardships beyond other persons, if this construction should prevail, does not carry so much force in it as he would have us suppose. *Per Cur.*—Order of sessions quashed: original order affirmed.

Two justices made an order for the removal of *James Gould* and *Eliza-Child* of a *betb* his wife from *Bray* to *Shottesbrooke* (both in *Berkshire*:) and, upon appeal, the sessions discharged that order. The pauper was born in *Bray*; and, being twenty years of age, was hired and served there for a year: but he was the son of a certificate-man, who came into *Bray* with a certificate from *Shottesbrooke*; and he had gained no other settlement. On *Tuesday* 26th *Nov.* last, a motion was made by Mr. *Ford*, to quash this order of sessions; upon the authority of the case between the inhabitants of *Sherborne* and *Thornford*, *P. 15 G. 2, B. R.* (the preceding case) where it was determined that the children of certificate persons, born in the parish, could not gain a settlement in it, but by one of the two methods prescribed by 9 & 10 *W. 3, c. 11.* Rule to shew cause. Sir *John Strange*, who now shewed cause against quashing the order of sessions, did not deny that this question depended on 9 & 10 *W. 3, c. 11.* But besides the qualifications particularly specified in that act, the court has extended them by construction, and has let in purchasers, though they were certificate-men. This son was not in being, when the father came from *Shottesbrooke* to *Bray*; but was born afterwards: therefore he is not strictly within the words of the act, coming into a parish by certificate: and being twenty years of age, he must not be considered as part of his father's family and dependent upon his settlement. An apprentice of a certificate-man shall not, as being so, gain a settlement: but if assigned over, he may acquire one. The counsel on the other side (Mr. *Ford* and Mr. *Hayes*) relied on the case of *Sherborne* and *Thornford*, where it was holden that the son was restrained to the same methods of gaining a settlement as the father; and could not gain a settlement under a hiring and service for a year; as a case directly and absolutely in point to the present case. Mr. Justice *Wright* and Mr. Justice *Denison* said, that case was exactly in point. There the son was sixteen years old, and was born in *Sherborne*, the parish to which his father was certificated; and was hired and served for a year to *Francis Pope*, in *Sherborne*: and the court were clear, that though the pauper was born in the parish, after his father's coming thither by certificate, yet he did not gain a settlement by service. Mr. Justice *Fesser* concurred, and said it was so settled upon good reason; because, as the son came under the advantage of the certificate, and was not removable till actually chargeable, he ought to be bound by the terms of it. *Per Cur.* (*viz.* these three judges, the chief justice being absent) unanimously and clearly—Order of sessions quashed: order of two justices affirmed.

Two

Child of a certificate-man may gain a settlement by hiring and service for a year, if such child hath served an apprenticeship in a third parish, and after that returned to the parish the father came into by certificate. 2 Bar. Sett. Ca. 428, Trin. 30 & 31 Geo. 2, (June 13, 1757) Rex v. inhabitants of Great Torrington.

Two justices removed *Mary Bray*, single woman, from *Bideford* to *Great Torrington*: and the sessions confirm their order. It appeared, upon the special case stated, that *Hugh Bray*, and his wife, and *Elizabeth* and *Mary* their daughters, came into *Bideford* by virtue of a certificate from *Lancrafts* directed to *Bideford*, and inhabited there some years; and that *Mary* the pauper, was then bound an apprentice, by the officers of the parish of *Lancrafts*, by the allowance of two justices of the peace, to *Thomas May*, for an estate in *Lancrafts*; and lived in *Great Torrington* as afore-said an apprentice, for several years, under the said indenture. That after the said apprenticeship expired, the said *Mary* hired herself a servant for a year, with *Solomon Lyon*, in *Bideford*, and lived with him there, for such year, and for eleven months after. The sessions, being of opinion that the said *Mary*, coming at first in the said parish of *Bideford* under the said certificate as afore-said, did not gain a settlement there, by the subsequent service as a covenant-servant as afore-said in that parish, confirm the said order. Mr. *Gould* moved to quash both these orders, (on *Wednesday* 11th of last month;) and urged that the pauper, by having served an apprenticeship in a third parish, became emancipated from her father's family, and *sui juris*, and quite clear of the certificate; and therefore was as much at liberty to gain a new settlement in *Bideford*, as any uncertificated person whatsoever could be. Mr. *Hussey* was to have shewn cause why the orders should not be quashed: but he very candidly acknowledged that he had looked into the cases, and was satisfied that these orders could not be supported. Lord *Mansfield*—Certainly, they cannot. Rule to quash them, made absolute.

Settlement not gained by a certificate-man, who hired a tenement of 10l. a year, because the sessions adjudged it fraudulent; and the circumstances warranted their conclusion. 1 Bar. Sett. Ca. 171, Hil. 15 Geo. 2, Rex v. inhabitants of St. Nicholas in Harwich. 2 Stran. 1163.

Two justices made an order for the removal of *Thomas Parsons*, *Susannah* his wife, and *Susannah*, *Sarah*, *Thomas*, *William*, *Robert* and *Elizabeth*, their children, from *Woolverstone* in *Suffolk* to *St. Nicholas* in *Harwich*, in *Essex*: and the sessions, upon appeal, confirmed their order. The order of sessions is to the following effect—viz. this court being moved, by way of appeal, to set aside an order under the hands and seals of *John Sparrowe* and *William Alton*, esquires, two, &c. for the removing of *Thomas Parsons*, *Susannah* his wife, *Susannah*, *Sarah*, *Thomas*, *William*, *Robert* and *Elizabeth*, their children, from the parish of *Woolverstone* in the county of *Suffolk* to the parish of *St. Nicholas* in *Harwich* in the county of *Essex*, as the place of their last legal settlement; on hearing the counsel and the evidence on both sides, the case appeared to be—That the said *Thomas Parsons* obtained a certificate from the churchwardens and overseers of *Woolverstone*, in the words following—To the churchwardens and overseers of the poor of the parish of *Harwich* near *Dover-Court* in the county of *Essex*, or to any or either of them. *Suffolk*, to wit, we whose hands and seals are hereunto set, being the churchwardens and overseers of the poor of the parish of *Woolverstone* in the county of *Suffolk* afore-said, do hereby certify that we do own and acknowledge *T. P. S.* his wife, *S. S. T. J.* and *W.* their children, to be our inhabitants legally settled in the parish of *Woolverstone* afore-said. In witness whereof we have hereunto set our hands and seals this 31st day

day of December in the 11 G 2, &c. 1737. *James Hare*, churchwarden : the mark of *Jonathan Rozier*, overseer. Attested by R. N. T. C.—We whose names are hereunto subscribed, two of his majesty's justices of the peace for the county aforesaid, do allow of the above-written certificate : and we do also certify that T. C. one of the witnesses who attested the execution of the said certificate, hath made oath before us, that he did see the churchwarden and overseer, whose names and seals are to the said certificate subscribed and set, severally sign and seal the said certificate : and that the names of the said R. N. and T. C. (whose names are above subscribed as witnesses to the execution of the said certificate) are of their own proper hand-writing. Dated the 31st day of *December* in the year of our Lord 1737. *E. Lynch, John Cornelius*.—Which said certificate appeared to this court to be legally executed, attested, sworn and allowed, pursuant to an act of parliament lately made and provided. That the said *Thomas Parsons* went into the parish of *St. Nicholas in Harwich*, with the said certificate, and delivered the same unto Mr. *Griffith Davis*, an inhabitant of the said parish : but whether he was a churchwarden or overseer of the said parish, did not appear. Subsequent to which delivery, *William Trotman* of *Ipswich*, brewer, having hired a public house in the said parish of *St. Nicholas*, (called the *Angel*) at a yearly rent of 18*l.* let part of it to the said *Parsons*, as a public house, for 9*l.* 10*s.* a year ; reserving the brewing-office and other parts of the said house to himself : and subsequent to the letting, and the said *Parsons* having obtained a licence from the justices of the borough of *Harwich*, entered into the following bond—Know all men by these presents, that I *William Trotman* of *Ipswich* in the county of *Suffolk*, brewer, am held and firmly bound unto the mayor and burgesses of the borough of *Harwich* in the county of *Essex* in 25*0l.* of good and lawful money of *Great Britain*, to be paid to the said mayor and burgesses, their certain attorney or successors : to which payment well and truly to be made I bind myself, my heirs, executors and administrators, firmly by these presents. Sealed with my seal. Dated the 10th day of *January* in the year of our Lord 1737, and 11 G. 2, &c. Whereas the above-bounden *William Trotman* is at present the immediate tenant to the landlord, owner or proprietor of the messuage, tenement or inn, commonly called or known by the name or sign of the *Angel*, situate in *Harwich* abovesaid, of late let or rented at and under the yearly rent of 18*l.* And whereas the said *William Trotman* hath put and placed one *Thomas Parsons* an inhabitant of the parish of *Woolverstone* in the county of *Suffolk*, into the said house for the management and carrying on of the business of the same, as a victualler ; who, upon the special instance and request of the said *William Trotman* on his behalf, hath obtained from *John Philipson*, Esq; the present mayor of the said borough of *Harwich*, and other of his Majesty's justices of the peace for the same, a licence for his so doing in the usual form : and whereas the said *Thomas Parsons*, with respect to his substance or estate and effects, is under a legal incapacity of hiring the said house in a fair way, as a tenant, or of renting any other lands or tenements of the yearly rent of 10*l.* or upwards, whereby to gain a settlement out of the said parish of

Woolverstone; and having a large family, to wit, a wife and five children, might haply hereafter, by hiring the said house of the said *William Trotman* or others deriving interest from him, be deemed to gain a settlement in *Harwich*, and by such means become a charge and burthen to the said mayor and burgeses of the said borough and other the inhabitants of the parish of *St. Nicholas* within the same (which the said *William Trotman*, in consideration of the said licence being granted at his request, hath undertaken, as much as in his power is, to prevent;) now therefore the condition of the above-written obligation is such, that if the said *William Trotman*, his heirs, executors or administrators, do and shall from time to time and at all times hereafter save harmless and keep indemnified, as well the said mayor and burgeses of the borough of *Harwich* aforesaid, and their successors, as other the inhabitants and parishioners of the said parish of *St. Nicholas* within the same, of and from all charges, damages and expences which they or any of them might hereafter happen to sustain or be put unto for the provision or maintenance of the said *T. P.* his wife or children or any of them, by reason or means of his or their gaining any legal settlement in *Harwich* by or under his the said *Thomas Parson's* hiring or renting the said house of or under him the said *William Trotman*, or of or under *William Trotman* his son, or of or under any other person or persons whatsoever with his the said *William Trotman* the father's assent, consent, means or procurement; then this obligation to be void, and so forth. *W. Trotman*.—Sealed and delivered in the presence of us *S. G. J. A.* Soon after this hiring of *Trotman*, the said *parsons* hired, of another person, a stable, (for the convenience of keeping hogs from *Mr. Trotman's* brewing-office,) and a yard or garden, at the rent of 20s. per Annum, (both in the said parish;) which the said *Parsons* entered upon: but the said *Trotman* soon discontinuing his brewing at the said office, the said *Parsons* then let off the said stable for 10s. per annum; but continued the occupation of the said yard or garden for a whole year, and paid 10s. for the rent thereof. The said *Parsons* likewise entered upon, resided in, and continued the occupation of the said part of the house under this demise of *Trotman*, for two years and a half, which was as long as *Trotman's* interest continued therein; and after that was determined, occupied the whole (but without previously agreeing with the owner for his stay therein,) for upwards of half a year; when the owner distrained him for half a year's rent, and levied of his goods then remaining upon the premises the sum of 9l. for the said half year's rent. During the time of these several occupations, the said *Parsons* was charged with and paid his share of the public levies of the said parish of *St. Nicholas*. It appeared likewise to the said court, that the said *Parsons* had been a farmer in large dealings; but that he had contracted debts, was fallen into decay, and was not able to go on with the said business of farming: subsequent to which, he hired the said part of the house of the said *Trotman*; which the said *Parsons* furnished with goods, to the value of 30 or 40l. It likewise appears to this court, that the proper name of the parish appealing is *St. Nicholas in Harwich*; and that there is no such parish of *Harwich* near *Dover-court*: nor did it appear to this court that the

the borough or corporation of *Harwich* contains any more parishes than one. Upon which case this court is of opinion, upon the facts only above stated, That the said hirings and occupations were fraudulent, and could not intitle a certificate-person to a settlement: but believing the said certificate, with the circumstances attending it, to be ineffectual to the said parish of *St. Nicholas* in *Harwich*, do therefore confirm the said order of removal. On *Friday 13th November* last, a motion was made, by Mr. *Lloyd*, to quash these orders: for the certificate was an effectual one to the parish of *St. Nicholas*. The sessions seem to found their notion of its being ineffectual to that parish, upon two reasons; viz. 1st, that this certificate was directed to the parish of *Harwich* generally; whereas the true name of it was *St. Nicholas Harwich*: and 2dly, the person to whom he delivered it did not appear to be a churchwarden or overseer. But, as to the former of these reasons—the answer is, that the act of parliament of 8 & 9 W. 3, c. 30, s. 1, does not require the certificate to be directed at all: no more does the explanatory act of 9 & 10 W. 3, c. 11. And as to the latter of their reasons—it is not necessary that the inhabitant to whom the certificate was delivered should appear to be a churchwarden or overseer of the parish. The counsel who now shewed cause on behalf of the parish of *Woolverstone*, did not much rely upon it that a particular direction was necessary. They admitted that a certificate would be good without any direction at all: but at the same time they argued that a wrong direction would vitiate it, and compared it to a case in *Salk.* 493, between the parishes of *St. George* and *St. Olave Southwark*; where an order was quashed for being directed to the wrong parish officers. They chiefly relied on its not being delivered to a parish-officer: which the act of 8 & 9 W. 3, c. 30, s. 1, expressly requires; and which ought, as they insisted, to appear. And if the certificate was ineffectual to the parish of *St. Nicholas*, then he gained a settlement there, by being charged and paying his share of its public rates and levies. However, even if this certificate, thus delivered, were admitted to be effectual and legal, and to bind the parish of *Woolverstone*, yet they insisted that he gained a settlement in *St. Nicholas* by renting 10*l.* a year. Indeed the sessions state this to be fraudulent: but they adjudge it to be so, upon the facts stated, and upon those only: and since they have given their reasons, the court are judges of the conclusion they draw from those reasons. And upon the facts stated, there is not the least colour of fraud. Mr. Justice *Chapple* *.—The question is, whether the pauper gained any settlement in *Harwich*; either by renting 10*l.* a year there, or by being charged and paying to the rates of that parish. Now being charged and paying to the rates will not gain him a settlement, if he was a certificate-man: and as to the renting a tenement of 10*l.* a year, the sessions adjudge it fraudulent. If the justices specially state their reasons, this court may judge of them. However the justices are proper judges of the fraud: and here are several circumstances which shew this taking to have been calculated to gain a settlement, and seem to be evidences of fraud; and the sessions having adjudged it so, they seem, upon the whole, to have done right. As to the validity of the certificate—there

* L. C. J. Lee was ill: Mr. Justice Page was dead; and his successor not appointed. So that there were only two judges in court.

are two objections to it. The justices say that they believe it to be ineffectual to the parish of *St. Nicholas*. They state that there is but one parish in *Harwich*; viz. *St. Nicholas*: and the certificate is addressed to the parish of *Harwich* near *Dover-Court*; whereas there is no such parish. I do not think any direction at all to be necessary: and a misdirection is as a void direction. Besides, if a direction were necessary, I should doubt whether this mistake of the name would make it bad. I remember a case of a carrier, in lord *Raymond's* time, where the plaintiff recovered, though there was no such parish as *Wicomb*, the true name being *Chipping-Wicomb*. However, I do not think any direction to be necessary. Then as to the delivery of the certificate—it was delivered to an inhabitant, though it does not appear that he was a parish-officer. If it had been a removal to *Harwich*, then indeed a delivery to the officer had been necessary. But the acts do * not make it a condition that he shall deliver his certificate to the parish officers. He therefore held this man not to have gained a settlement in *Harwich*: and was of opinion that the orders ought to be quashed. Mr. *J. Wright* concurred—It is admitted, on all hands, that the act of 8 & 9 *W. 3, c. 30*, does not require any direction of a certificate; and that if there had been none, it had nevertheless been good. The reason of it is, because the parish of *Woolverstone* has by their certificate acknowledged him to be an inhabitant legally settled in their parish: and they are hereby bound against all the world. As to the delivery of the certificate—the parish to whom a certificate is delivered cannot remove the certificated person indeed, till he becomes chargeable: but if no certificate is delivered to them, *non constat* that there is any; and they may, in that case, remove him on complaint of his being likely to become chargeable. But yet, this does not make the certificate ineffectual: the parish who gave the certificate is in all events bound by the certificate, therefore the certificate is good as to the parish of *Woolverstone*. The question then is, whether he gained a settlement in *Harwich* within 9 & 10 *W. 3, c. 11*, by taking a tenement of 10*l.* a year value. Now though he took such a tenement, yet he let off part of it. And the bond recites his poverty and incapacity to gain a settlement. *Trotman* had let him in: and the pauper continues in, after *Trotman's* interest ceased, without any new bargain. He takes a little stable and a garden at 20*s.* a year: and then he quits the stable, and there remained only 9*l.* 10*s.* a year. The justices adjudge this fraudulent: and the circumstances vindicate their adjudication. But if the facts had not vindicated their conclusion, yet unless it had manifestly and plainly appeared to have been a misconclusion, I do not see that we could have adjudged it not to be fraudulent. Upon the whole, I think the settlement is at *Woolverstone*; and that the rule ought to be made absolute. *Per Cur.*—Rule made absolute for quashing both orders.

* N. B. 8 & 9 *W. 3, c. 30*, s. 1, does expressly require that he shall deliver it to the churchwardens or overseers.

Settlement not gained by a certificate-man, who received 10*l.* a year for officiating.

Two justices made an order for the removal of *Alice Membury* and her nine children (specifying their names and ages) from *Sheephead* in *Leicestershire* to *Melborne* in *Derbyshire*: and the sessions, upon appeal, confirmed that order. Special case—She was the widow of *Thomas Membury* deceased:

deceased; which *Thomas Membury*, his wife and family were, by certificate dated 30th Nov. 1733, duly certified and acknowledged to be inhabitants legally settled in the parish of *Sheepshead*. The said *Thomas Membury* removed, with his family, from *Sheepshead* to *Melborne*, by virtue of the said certificate; and continued to reside there to the time of his death, which happen'd in 1743. The said *Thomas Membury*, during such his residence at *Melborne* officiated as schoolmaster there. During his continuance in the said school, lady *Betty Hastings* did, by deed indented and enrolled in the high court of chancery, bearing date 14th December 1738, convey to the hon. *John Dawney*, esq. and other trustees therein named, and to their heirs, divers lands and tenements lying within the county of *York* in trust to permit *John Benson*, clerk, vicar of *Lodsbam*, *Christopher Weatherhead*, clerk, vicar of *Thorpe-Arch*, and *Robert Potter*, clerk, vicar of *Collingham*, and the succeeding vicars for the time being of the said three vicarages for ever, to receive and take the rents and profits of the said premises for ever, and apply and employ the clear monies raised thereby, for such intents and purposes and in such manner as in and by the schedules thereunto annexed are specified or directed: in which said schedules are the following words—Also the yearly sum of 10*l.* to the charity-school of *Melborne* in the county of *Derby*, to be paid to the vicar there for the time being. Which sum of 10*l.* the said *Thomas Membury* received from the vicar of *Melborne* aforesaid, from the execution of the said deed to the time of his death in 1743. That the said sum of 10*l.* was not appropriated to any other use. Therefore the court of sessions, apprehending the said *Thomas Membury* hath gained a freehold estate by receiving the said 10*l.* a year under the said deed, confirm the order, and discharge the inhabitants of *Sheepshead* from the said *Alice Membury* and her said nine children. On Monday 11th Feb. last, a motion was made by Sir *John Strange* and Mr. *Lloyd*, to quash these orders. Their objection was, that there are only two methods whereby a certificate-man can gain a settlement; viz. renting a tenement of 10*l.* per annum value; or executing some annual office in the parish, being legally placed therein: whereas this is neither of these cases; nor any freehold either in law or equity. Upon shewing cause, now, for the parish of *Sheepshead*, it was urged by Mr. *Gundry*, Mr. *Ford*, and Mr. *Wilmot*, that there was not enough stated to shew that the two justices had done wrong: and therefore the court will suppose that they have done right; and the order of the two justices ought to stand confirmed. However, if the man was schoolmaster for life, and had a freehold in it, that would gain him a settlement: and the receiving this annuity of 10*l.* a year, gives him as much consequence in the parish as renting 10*l.* a year. Notwithstanding the confinement of a certificate-man's gaining a settlement, to the two cases of renting 10*l.* a year, or executing an annual office in the parish; yet the property of an estate of his own, which renders him irremovable from it, has always been adjudged to gain a settlement: and so, for the same reason, will his being fixed in the schoolmastership of an endowed school. This payment of 10*l.* a year to the vicar was only in trust for the

ating as
schoolmaster.
1 Bur. Sett.
Ca. 244, East.
18 Geo 2,
(May 19,
1745) Rex v.
inhabitants
of Melborne,
2 Stran. 1225,
S. C.

* There were three of them, in all.

the schoolmaster; and therefore it is the same thing as if it had been immediately payable to him. Surely, a man who receives 10*l.* a year is less likely to become chargeable, than a man who pays 10*l.* a year. On the other side, it was said that the pauper remains fixed upon *Sheepshead*, by their certificate, unless it appears that he has gained some other settlement. Now here it only appears that he officiated as schoolmaster: nothing further appears. Besides, the legacy of 10*l.* is to the vicar, not to the schoolmaster; and for the benefit of the school, not of the master. This man had no legal demand for it: he only received it as an occasional charity. There is no need to send this back, to be further stated; because, as there is not sufficient stated to shew that the man did or could gain a settlement, the certificate must stand. The sessions have plainly and manifestly determined wrong: for they give the reason of their adjudication; *viz.* their apprehension that the man gained a freehold estate by receiving 10*l.* a year under the said deed. And its being an annual office was not before them. Lord chief justice *Lee*—We must now determine upon all* the orders: for we must take this special case stated in the order of sessions to be the case upon which the two justices removed the paupers. By the act of 9 & 10 *W.* 3, c. 11, two cases are specified as gaining a settlement to certificate-persons; *viz.* renting a tenement of the value of 10*l.* *per annum*; and executing an annual office in the parish, being legally placed therein. Now a schoolmaster is no annual office; nor indeed does it appear that he officiated more than occasionally: it don't appear that he had any right to it; or even that he was placed in it. Then as a tenement of 10*l.* a year—this annuity of 10*l.* *per annum* does not appear to be appropriated to the schoolmaster; nor does this man appear to have any interest in it, (though indeed he received it:) he could have no freehold in it, beyond doubt. And the sessions have determined it upon the reason of his having gained a freehold by receiving it: which he certainly has not. Therefore their order is a bad one. Mr. Justice *Wright* and Mr. Justice *Denison* concurred in the same opinion that by receiving this charity, he gained no freehold: and they added, that as this was given to the vicar, or at least to his disposal, they suspected lady *Betty Hastings* considered the vicar as the person who was himself most likely to teach the school. *Per cur.* unanimously—Rule made absolute for quashing the orders.

Settlement not gained by certificate-man, though legally placed in an annual office, if he does not execute it a whole year. 1 Sett. Ca. 238, Mich. 18 Geo. 2, (Nov. 28,

Two justices made an order for the removal of *William Overington*, *Mary* his wife, and their three children, *William*, *Mary* and *Jane* (aged about 10, 8, and 5 years respectively) from *Fittleworth* to *Pulborough*, (both in *Sussex*;) and, upon appeal, the sessions discharge that order. Special case — The said *William Overington* came into *Fittleworth* with a certificate from *Pulborough* dated 31st *July* 1736, duly attested and allowed. He continued in *Fittleworth*, without gaining any settlement there, till *Michaelmas* last: soon after which time, at a court leet of the bishop of *Chichester* for the manor of *Amberley* in the said county, on the 24th of *October* last past, (within which said manor the said parish of *Fittleworth* lieth,) the said

said *William Overington* was duly elected and sworn tything-man for the tything of *Cold Waltham* in the said county; which said tything doth not extend through all the said parish of *Fittleworth*, but comprehends that part of it wherein the said *William Overington* resided. That the said *William Overington* continued in the execution of the said office in the said parish of *Fittleworth*, until the 30th day of *March* last. But the said *William Overington* on the 27th day of the same month of *March* did actually become chargeable, and asked and received relief from the said parish of *Fittleworth*. Whereupon, upon the complaint of the said parish of *Fittleworth*, the above mentioned order was made for removing the said *William Overington* and his said family from *Fittleworth* to *Pulborough*. The sessions are of opinion that the said *William Overington*, by the means aforesaid, hath avoided his certificate and gained a settlement in *Fittleworth*. And thereupon they discharge the order of the two justices. On *Wednesday* 30th of *May* last, a motion was made by Sir *John Strange* and Mr. *Burrell*, to quash this order of sessions: and a rule was made to shew cause why it should not be quashed, and the original order affirmed. It was then urged, that though it had been settled in the case of *St. Mary Calendar* and *St. Maurice in Winchester*, P. 8 G. 2, B. R. and in the case of *Holy Trinity*, and *Garfington*, Tr. 2 G. 2, B. R. that executing for one whole year an annual office within the parish, being legally placed therein, is sufficient, (whereas formerly it was doubtful whether the office must not be parochial;) yet it had never been carried so far as that executing it part of the time and in part of the parish only, should be sufficient. On *Wednesday* last (the 21st instant) cause was shewn by Mr. *Lloyd* and Mr. *Humphryes*, against quashing this order of sessions. They said that the act of parliament of 9 & 10 W. 3, c. 11, had not made it necessary, nor did the cited cases prove it to be necessary, that the office should be executed for a whole year, or extend thro' the whole parish. They added, that the justices had no jurisdiction to remove him during his being in the execution of his office. So a servant is irremovable during the service: and an apprentice, during the contract. The counsel for the motion said that the question did not depend on 9 & 10 W. 3, singly; but that 3 & 4 W. & M. c. 11, sect. 6, ought also to be taken into consideration; which specifies what acts shall be equivalent to notice; and one of them is executing an annual office in the parish during one whole year: and the latter act of 9 & 10 W. 3, is most clearly relative to the former, of 3 & 4 W. & M. Lord chief justice *Lee* observed that three objections had been made to the order of the two justices.—1st, That their order cannot be confirmed; because the man was not a subject of their jurisdiction, being in the execution of an office to which the public had a right; and therefore the justices could not interpose to remove him: and it was said that even servants were irremovable during their service. But no case has been cited to prove that servants are so: and I should very much doubt it. But here the act of parliament is express that the jurisdiction shall not be exercised upon certificate-men before they become actually chargeable; but then (though not before) the justices are to have jurisdiction.

dition to remove them: and there is no exception of any body whatsoever. The 2d objection—That the office does not extend throughout the whole parish—has no great weight with me. For, the act only says, it shall be an annual office in the parish: and we are bound by the express words of the act. The third objection is that the office has not been executed during the space of a whole year. The case of *Garfington* was not determined on this head. Besides, the person was there legally placed in the office, and did execute it for a whole year. The act does not say a whole year after admission. The swearing has relation to the placing in the office. The act of 3 & 4 W. & M. c. 11, has words which go further than this act of 9 & 10 W. 3, c. 11, there, a whole year's execution is required by the express words: here, the words are "execute an annual office in the parish, being legally placed therein." If this act is not to be understood in the same sense as the former, there will remain nothing more than the legal placing: for, ever so little time's execution would suffice, on that principle, to make an execution of an annual office. He said, the reason of these two exceptions in 9 & 10 W. 3, which give a settlement to certificate-men, was for the reward of their service, and for the person's being of such estimation as to be judged unlikely to become chargeable. Upon the whole, he thought it reasonable to give the same construction to this act of 9 & 10 W. 3, as to 3 & 4 W. & M. and make a whole year's execution of the annual office necessary towards gaining the certificate-man a settlement: especially as the contrary construction would reduce it to the single qualification only of a legal placing; since one hour's executing the office would, upon that construction, serve for an execution of it within the act. Therefore he was for considering it, at least. Mr. Justice *Wright* concurred—The 9 & 10 W. 3, says a certificate-man shall gain no settlement, unless by renting a tenement of 10*l.* *per annum*, or executing some annual office in the parish, being legally placed therein. Now this must be such an annual office as by the laws then in being would gain a settlement: and the former act, of 3 & 4 W. & M. had made the executing an annual office for a whole year equal to notice, and so to gain a settlement. But this man has not gained a settlement: he has not executed it for a whole year. If so, then the objection to the jurisdiction of the justices drops: for, by 8 & 9 W. 3, c. 30, such a person having asked relief becomes actually and instantly removable. And his removing himself, or being thus removed, is tantamount. Therefore there is no inconvenience: for the justices may appoint another constable or tythingman, as on a removal out of the parish. And he held that it need not be an office throughout the whole parish: for, being an annual office within the parish is sufficient. Mr. Justice *Denisen* held the objection to the jurisdiction to be of no weight at all; because the act of 8 & 9 W. 3, c. 30, is express that he shall be removed as soon as he becomes actually chargeable; and that act has no exceptions. As to the tything not being co-extensive with the parish—The express words of the act are only some annual office in the parish: and we are not to vary from it; but must be directed by its express words. As to the time of executing the office (which is the third and main objection)—There has

has been no case on that head, that I know of. It was a hardship on parishes to be obliged to receive certificate-men: and therefore I take the act of 9 & 10 W. 3, c. 11, to be restrictive; and not to give any new qualification. It could never be the meaning of that law to give a certificate-man a greater qualification than a pauper at large was intitled to. And why should the legislature confine it to an annual office, if they did not intend to require the execution of it for a year, as the qualification for gaining a settlement? The construction now attempted, would introduce a qualification to a certificate-man, which a pauper at large has not: which could never be the intention of the act. Lord chief justice *Lee* said he would think of it a little, on this head of the want of having executed it a whole year. On the rest, he said, he had no doubt. Mr. Justice *Wright* and Mr. Justice *Denison** were also clear that the other two objections were of no weight. *Cur. advis.* Lord chief justice *Lee* now delivered the resolution of the court. We are of the same opinion that we declared before; viz. that here is not a settlement gained by this certificate-man, by the executing the office of tythingman, in the manner as is specially stated in the order of sessions; because the execution of the office, as there stated, is an execution for the space only of six months. My opinion on the † act is this—That the meaning of the words “unless † he shall execute some annual office in such parish,” &c. is, that unless he does that service which is a performance of this requisite, which the act prescribes, for the space of a whole year, he does not gain a settlement. And here the performance has been for less than half a year: therefore he has gained no settlement by it. And, accordingly, the rule must be (and it accordingly was) that the order of sessions be quashed: and the order of two justices affirmed.

* Mr. Justice Chapple was absent.

† 8 & 9 W. 3, c. 30.

Settlement by Estate.

Two justices removed *Thomas Gate*, and *Mary* his wife and *Elizabeth* their daughter from *Hever* to *Sundriss*; and upon appeal to the sessions, they confirmed the order of the two justices. The case stated on the order of sessions was this: *Thomas Perck*, by indenture dated 25th March 1701, demised to *Thomas Gates*, the father of *Thomas Gates* the pauper, one messuage or cottage with a garden, orchard and backside, &c. in *Hever*, for ninety-nine years, at 5*s.* per annum: and the said 5*s.* was the full and most improved rack-rent, for any thing that appeared to the contrary. *Thomas Gates*, the father, entered upon the said cottage by virtue of the said lease; and lived in it, under the said lease, to the time of his death. By his last will, he devised the said messuage and premises, and all other his estate both real and personal, to the said *Thomas Gates* the son, his heirs, executors, administrators and assigns, upon condition that he pay, or secure to be paid, unto *Frances* his mother 20*l.* towards her maintenance, and died. *Thomas Gates* the son proved the said will, and entered upon the said premises by and under the said lease and will, and lived

Residence upon one's own estate gains a settlement. 1 Bur. Sett. Ca. 7, Trin. 7 & 8 Geo. 2, (June 3, 1734) Rex v. inhabitants of Sundrich. 1 Sess. Ca. No. 200. Cases in B. R. 7, 8, 9, 10 Geo. 2, page 76, S.C.

therein until and at the time of making the original order. But it did not appear that he had paid or secured the said 20*l.* or any part thereof; the said *Frances*, the mother, dying in a very short time after *Thomas* the father. The sessions held it not to be a settlement in *Hever*: and therefore confirmed the order. On *Friday* 10th *May* 1734, Mr. *Strange* moved to quash this order of sessions. The general question was, whether this *Thomas Gates* the son be removable on 13 & 14 *Car.* 2, c. 12. And to prove that he was not removable, he cited the case of *Mursley* and *Grandborough* parishes, 1 *Str.* 97, where it was determined, that a man, who comes to settle upon his own, cannot be removed from it. And the same thing had been before determined in the case of freeholds, 2 *Salk.* 524, between the parishes of *Ryffip* and *Harrow*; and also in the case of copyholds of inconsiderable value, *v. infra*. Upon shewing cause against quashing the orders, on *Saturday* the 25th of last *May*, the counsel for *Hever* parish urged, that the value of the premises is principally to be considered. They admitted that it has been determined, by construction, that a person cannot be removed from his freehold: and the reason is, because it would be a disseisin. And the case of copyholds was analagous to that of freeholds. But this man is removable within the express words of the act; since the value is less than 10*l.* a year. It makes no difference, that he was executor or devisee of the original lessee: for he is considered as assignee; and there is no difference between the case of an assignee and that of an original lessee. If an assignee should be holden to be irremovable, every pauper who had a mind to settle in a parish would get an assignment of a lease of a tenement of small value, instead of taking an original lease, and thereby render himself irremovable. In the case of *Mursley v. Grandborough*, they supposed that the judges must have determined upon the value: for there is no legal difference between one term for years and another. It was answered by Mr. *Strange*, that this matter was settled in the case of *Mursley v. Grandborough*; which was a term for ninety-nine years, at one shilling *per annum*: and the person removed came to it by marrying the administratrix of the *cestui qui trust* of the residue of the term, (which had been assigned in trust.) And there it was said, that the court could not enter into the value. In the case of a copyhold, a man cannot be removed from his own, though of a very small value. This was determined *P. 11 Ann.* in a case between the parishes of *Harrow* and *Edgware*, where the yearly value was only 25*s.* Nor indeed can a man be at all removed from what he comes to settle upon as his own, under the statute of 13 & 14 *C.* 2, c. 12. It was now argued a second time, and the counsel who argued in support of the orders said that the case of *Mursley v. Grandborough* was upon a beneficial lease. They observed that it is only a single case: and Mr. Justice *Powys* differed from the rest of the judges. And the court rejected a single authority, this very term, in the case of *Rex v. Penelope Smith*. They insisted that the present case is directly within the act: which the case of *Mursley v. Grandborough* directly, as they asserted, contradicts. The counsel for quashing the orders answered, That it is an adjudged point, that a freehold

hold and likewise a copyhold, (though ever so small) make a settlement. 2 Salk. 524, between the parishes of *Rysselip* and *Harrow*. And between *Harrow* and *Edgware* P. 11 Ann. B. R. And the court have since gone further, even to terms for years, in the cited case of *Murley v. Grandborough*. It is objected that that was a beneficial lease. But the whole improved value was only 30s. per annum: so that that makes no difference. The pauper was considered as having come to it by operation of law. All his title to the present possession was in right of his wife; and the greatest part of the cottage was let out; yet the court held that the marrying a woman who had only so small a part of it, made him inremovable. The court only considered the legal property of the party, and not the value. In the present case it is not stated absolutely, that the improved rent was no more than 5s. per annum. But, be that as it may, the pauper came to it as a purchaser, under his father's will: and therefore he can't be removed from it. Lord *Hardwicke*. This case of removing a man who lives upon his own, is a case of a tender nature: and the court ought not to give too readily into it. It has been adjudged, in case of freehold, and also of copyhold, that it cannot be done. And I do not see the difference between them and leasehold; unless leasehold be within the words of the act. Therefore the words of 13 & 14 C. 2, c. 12, are material. They are—"Whereas poor people are not restrained from going from one parish to another; and therefore do endeavour to settle themselves in these parishes where, &c. then, to another parish; and at last become rogues and vagabonds: therefore it is enacted, that upon any such person or persons coming to to settle as aforesaid in any tenement under the yearly value of 10 l. two justices may, upon complaint of, &c. within forty days, by their warrant remove them." It is plain that the meaning of the act was to remedy the evil arising where poor people came to settle as is there before mentioned. Now freeholds and copyholds are not within the words of the act. And though this be a lease, yet it was made so long ago as in 1701: and this man comes in under his father's will. It is (together with other things) charged with 20 l. payable to his mother, for her maintenance: and it does not appear that any evidence was laid before the justices of the value of this lease. In the case of *Murley v. Grandborough*, it was not a beneficial lease of the whole; for a great part was let off. This appears to be a cottage, garden, orchard and backside. The pauper did not come to settle upon it as a rambler; but derived his right under his father. It would be too hard to give the justices authority to remove a person so situated. Therefore I think the justices are mistaken in their opinion: and the orders ought to be quashed. Mr. J. *Page*. I do not see that the party can be removed from his own, if he comes by it fairly. Indeed if he should outlive the lease, he may then be removed. In an action of trespass between *St. Peter's* and *St. Clement's*, lord ch. j. *Holt* held, that the pauper could not be removed from his own house, where there is no fraud. Mr. J. *Probyn*. The intention of the act was manifestly against persons who came into parishes on purpose to gain a settlement: and the reason of the fixing ten pounds

a year for the value of the tenement, is, because it requires such a stock that the man is not to be presumed likely to become chargeable. The act intends to prevent people from fraudulently settling in a parish by taking a lease themselves, under the yearly value of 10*l.* But this man has it by a precedent right; and his right to enter upon it is as good as if it were a freehold or copyhold: he comes into it upon a title; not by fraud. Ever so little in point of value is enough to make a person irremovable from freeholds and copyholds: and in the case of *Murphy v. Grandborough*, it is carried on to leasehold. That cottage was but 30*s.* a year in the whole; and only two rooms at most remained to the pauper's wife. Therefore that opinion was not given upon the value; but because it was his own, and therefore he was not removable from it. These premises must be of greater value than 5*s. per annum.* The justices do not appear to have inquired into the value. The father has charged it, together with his other estate, with 20*l.* So that it does not indeed appear that this alone was worth so much: but, on the other side, it does not appear that this man had any other estate; and probably he had not, or else they would not have removed him. This does therefore appear, I think, to be a beneficial lease. But that is not my principal reason: for it is his own; and he is not removable from his own. And if a man stays forty days in any house in a parish, from which he is not removable; from that time, he is settled there. *Mr. J. Lee.* This case is, as it seems to me, within the letter of 13 & 14 C. 2, c. 12. But it is plain that the judges have not taken it upon the letter, but considered the meaning and intention of it, and the preamble, which describes wanderers and vagabonds coming into parishes with bad views and designs. But freeholds and copyholds and also leaseholds where a man has a right, where the tenement is his own, are not within the intention of the act: and the justices cannot remove such persons from their own. So before 9 G. 1, c. 7, sect. 5, if a man made ever so small a purchase, he gained a settlement; even though he made it with an intent to gain a settlement. Therefore the statute requires it to be of a certain value; namely, of the value of 30*l.* and that to be *bonâ fide* paid. In the case now before the court, the pauper lived in a tenement which appears to be his own: and he had a right to it as executor and devisee of his father. Therefore he did not come into the parish of *Hever* to settle himself, but to take the benefit of his own; from which, as being his own, and coming to him in this manner, the justices could not remove him. *Per cur.* Therefore the rule must be made absolute, to quash the orders. Both orders quashed.

Settlement
gained by e-
state of the va-
lue of 30*l.*
bona fide
paid, with 40
days residence,
1, c. 7, sect. 5,
though the
premises

Two justices removed *Francis Gill*, *Elizabeth Gill* his wife, and *Elizabeth*, *Dorothy* and *William Gill* their children, from *Waddingham* to *Tedford*: upon appeal, the sessions confirmed the order of the two justices. The appeal was received, and adjourned to *Michaelmas* sessions; and a case in the mean time ordered to be made for the judge of assize, on 9 G. 1, c. 7, sect. 5, viz.—That *Francis Gill* was settled at *Tedford*; and contracted with *John Atkinson* for a house and curtilage in *Waddingham* for

39*l.* which was conveyed to *Gill* and his heirs accordingly, in consideration of 39*l.* *Gill* paid 9*l.* and *Isaac Bristol* paid the remaining 30*l.* to *Atkinson* by *Gill's* order. The conveyance was dated 2 May 1730; but was not executed till the 19th of May 1730. Upon 18 June 1730, *Gill* mortgaged the premises to the said *Isaac Bristol*, by demise for one thousand years, under a proviso to be void on payment of the money in a year. *Gill* continued in possession about four years after the mortgage: then *Bristol* entered, by virtue of the said mortgage and a release of the equity of redemption. Then the inhabitants of *Waddingham* procured *Gill*, being out of possession, to be removed to *Tedford*. The order of sessions recites that, whereas the judges of assize had not time to hear and determine it; and whereas the parties agreed this case to be the true state of the case; and then it proceeds thus—Now upon hearing counsel and further evidence on both sides, this court doth declare and adjudge that the purchase made by *Gill* was fraudulent; and that the settlement of *Francis Gill* his wife and children was at *Tedford*: but the parishioners of *Tedford* are no way concerned in the said fraud. A motion having been made to quash these orders, and a rule to shew cause obtained thereupon, it came on to be argued, upon Thursday the 1st of May 1735. The counsel for *Tedford* took exceptions, first to the form of the order of the two justices; which runs thus—*Lincolnshire Lindsey* to wit. To the churchwardens and overseers of the poor of the parish of *Waddingham* in the parts aforesaid. Now, *non constat* what are the parts aforesaid: and the court will not take judicial notice what they are; and *Waddingham* may be in another county. 2d Exception to the order of the two justices.—The complaint is that *Francis Gill* and *Elizabeth* his wife, *Elizabeth Derothy*, and *William Gill*, their children, has lately intruded themselves into the parish of *Waddingham*: and then they adjudge that *Tedford* is the legal settlement, (not saying the last legal place of settlement.) As to the merits—It is a case out of the act of parliament of 9 G. 1, c. 7, sect. 5. And the justices, in their adjudication, depart from their premises: for, the act does not extend to any case where the consideration exceeds 30*l.* But here the consideration is above 30*l.* and is therefore out of the act. And the consideration appears to have been *bonâ fide* paid by *Gill*; part by himself, and part by his order, (though by the hands of *Bristol*.) It does not even appear that *Bristol* had lent it him: therefore it shall be taken that it was *Gill's* own money. It is not stated for how much money the mortgage was made, nor upon what consideration. And the pauper continued in possession and enjoyed the house four years after it was mortgaged. No circumstances of fraud are stated: and therefore if this conclusion of the justices at sessions be drawn from the premises stated, it is a conclusion contrary both to the law and to the fact; and the court will themselves judge of it, and set it right. The counsel for the orders answered, that *Lincolnshire Lindsey*, is the constant form: and so it is always, where counties are divided into separate divisions. And the court will take notice of this: and so they also will, that *Waddingham*, being in that division of the county, is within that county. 2dly, “Has” is sufficient in the

should be immediately mortgaged. 1 Bur. Sett. Ca. 57, Trin. 8 & 9 Geo. 2, (June 22, 1735) Rex v. inhabitants of Tedford. 2 Sess. Ca. No. 164. S.C.

the complaint: but, however, the adjudication is right. As to the merits—Whether the sum paid as consideration-money was greater or less, if there be fraud, it poisons the whole. If this is not to be considered as a purchase under 30*l. bonâ fide* paid, such a construction would destroy the end and intent of the act of parliament. The justices are the proper judges of fraud; and they have adjudged that it was a fraudulent purchase. And it appears upon the face of the case, as stated for the judge of assize, that it was so. But that is not all: they are not confined to this state of the facts. For they heard further evidence on both sides, before they adjudged the purchase to be fraudulent. Lord *Hardwicke*.—It must be further evidence of the same fact: for the state of the case made for the judge of assize was before agreed between the parties to be the true state of it. There is no great weight in the exceptions to the form. That of the county is the constant form: the others are only to incorrectnesses. As to the merits—It is a new case. There seem to be two questions: (1st,) whether this be a case within the act of 9 G. 1, c. 7: (2dly,) if it be not, then, whether this purchase so far appears to be a fraud, as that the justices had authority, without any aid from this act of parliament, to adjudge it fraudulent, and that no settlement was gained under it. 1st, It does not appear to me to be within this act. The act says that none shall gain a settlement by virtue of any purchase, whereof the consideration doth not amount to the sum of 30*l. bonâ fide* paid, for any longer time than he shall inhabit in such estate. So that it is confined to purchases under 30*l. bonâ fide* paid. Consequently, if the vendor had such consideration of 30*l. bonâ fide* paid to him, it is not within this act. Now in the present case, the consideration was 39*l.* and was *bonâ fide* paid to the vendor. And it would be pretty hard, to say that the justices had a power upon this act to inquire whether the purchaser borrowed the money or not. It is a common case, to borrow money to make purchases: nothing is more frequent than to borrow a sum to make up the price. 2dly, Whether, without the aid of this act, the justices have authority to consider this as a colourable fraudulent purchase contrived and executed in order to give this *Francis Gill* a settlement in *Waddingham*. I think they might do this in case of a purchase, as well as in case of gaining a settlement by renting 10*l. per annum*, provided that the fraud sufficiently appears: because the fraud infects the whole, and makes it no purchase. But then the next question is, whether the fraud sufficiently appears in the present case. It was said that the justices are the proper judges of fraud. But a fraud is a fact which must be found. It must be so by a jury upon a special verdict: (for, in that case, it is not sufficient to find premises only, without drawing any conclusion.) The justices are judges of the fact: and they may judge of the fraud arising from the facts: but we are judges of the law upon the facts, though not of the facts themselves. If they had generally found the fraud, we might have been bound by such a general finding: but when they state the facts particularly, the matter is as much open for our determination upon it, as it was for theirs. Here, the facts are particularly stated: so that we can determine

mine upon them, as well as they could. The residing four years in this house, (which is one of the facts stated) is, to me, a very material circumstance in this case: and it is expressly stated that the parishioners of the parish of *Tedford* were no way concerned in the fraud. It has been urged that there might be other facts upon which the justices might adjudge the fraud: because the adjudication is said to be upon hearing further evidence. And, indeed, if the words upon hearing further evidence were to be taken for evidence of other new facts, we could not control their determination: but it is much more natural to suppose the further evidence to have been of the same facts; because the facts were before agreed. Two justices are only to consider concerning frauds which regard the parish (in order to gain a settlement in it). They are not to inquire concerning fraud between the parties: that would make them a court of chancery. Mr. *Bristol* is not stated to have been even a parishioner of *Tedford*: and the finding that the parishioners of *Tedford* were no way concerned in the fraud, excludes all presumption that they were so. The facts stated in this order do not, in my opinion, warrant the conclusion of the justices. Mr. *J. Page*.—This case does not seem to me to be within the act of 9 G. 1. But, without the aid of that act, the justices have a right to inquire into the fraud. I remember a case (I was of counsel in it) of *St. Giles's* in *Cambridge*.—The pauper bought a cottage there, and came thither to settle: and from thence he was removed, by an order of two justices. Upon this, the man brought an action of assault and battery for removing him. It was tried before lord chief justice *Holt*; and it was insisted that an action would not lie; because it was a fraudulent purchase, and so no settlement. It appeared that the man was not worth 1 s. but had borrowed the whole purchase-money of a gentleman who had an estate in the town. *Holt* held that the justices had a right to inquire into purchases of that kind; and had a right to remove, if they found them fraudulent. And the plaintiff was non-suited. Yet there the seller was no party to the fraud. Here is no sign of fraud, in the present case, between the parties interested: and it is expressly stated that the parish of *Tedford* was not concerned in any. Besides, it is frequent for persons to purchase without having so much ready money as the whole purchase amounts to. Therefore this circumstance alone can be no evidence of fraud, in the present case. I must take the justices to have stated all the facts. For, otherwise, it could not be the true state of the case: which it is agreed to be. Indeed, if the justices had not stated the case, we could not have looked into it: but where the facts appear to us, we are to judge of the fraud. And, for my part, I do not see that this amounts to a fraud. Mr. *J. Probyn*.—The question is, whether this be an order stating a complete special case for the opinion of this court; or, whether what appears to us was only a part of the case, which part only they referred to the opinion of the judge of assize, reserving the consideration of the full and whole case to themselves. They say that that case stated to the judge of assize was agreed to be the true state of the case: that is, so far as it was stated to him. The judge did not meddle with it.

The

The further consideration of it had been reserved to themselves, and when it came back, they heard further evidence on both sides. The only fraud that the justices could take notice of was such a fraud as would affect the parish in which the settlement was to be gained by the purchase. I own, I think that as far as the case is stated there does not appear any fraud: and the rather, since the man continued four years in possession after he had mortgaged it. And it is expressly stated that the parish of *Tedford* had no concern in any fraud. The order does not mention the consideration of the mortgage or of the release: so that we can judge nothing from thence. But my doubt is, whether this can be considered as a complete special order fully stated for the judgment of this court, as the sessions only consulted the judge of assize upon a part of the state of the case; and as the further evidence seems to go to new facts; (for they had no need to hear further evidence upon facts agreed on by both sides.) If the further evidence went to new facts, then the justices were judges of the facts that appeared before them: of which, we cannot inquire or determine, so as to take it out of their hands into our own. Mr. *J. Lee*.—If this state thus agreed to be true be not the whole of the case, there will not indeed be a sufficient reason for quashing the order. In general, where a case is specially stated, that case is taken to contain the full reasons of the determination made by the sessions: and therefore if the court hold those reasons to be ill, they will quash the order of sessions. I should rather incline to think that this state of the present case contains the whole of the case: it appears to be agreed by counsel on both sides to be the true state of the case. It was referred to the judge of assize: who did not meddle with it. When it came back to the sessions, there might be other justices present than were present at the former sessions; who might not take it on the concession of the counsel, but might desire to enter, themselves, into the examination of the matter. If this state of the case contains the whole of the facts, then the adjudication of the sessions signifies nothing, if we are of opinion that the facts are not sufficient to warrant their conclusions: for we are to draw a conclusion from the facts, when we have them fully before us. The subject of the act of parliament is only the payment of the consideration-money. If there be an actual payment of 30*l. bonâ fide*, it is not within the act. Now here is 39*l. bonâ fide* paid. I cannot see that this is a fraudulent purchase, with regard to the settlement. The constant determination has been, that when a person comes to live in a tenement of his own, though under 40*s. per annum*, free, copy or leasehold, he is irremovable. Now this man appears to have paid 9*l.* himself: and it does not appear that the remainder was borrowed. And the man lived four years in it. It does not at all appear what was advanced to him upon the mortgage. Therefore this man was irremovable after forty days continuance at *Tedford*: and consequently he was settled there. The most natural meaning of the words of the order is, that this state, agreed to be the true one, contains the whole case. And if it does, then it is a bad order. The court were unanimous, that if this state of the case be taken to be the whole state of

the

the facts, then the order is bad.—Lord *Hardwicke*. It would be pretty hard to say that these words “further evidence” (whether inserted by the clerk of the peace of course, or by order of justices) should destroy the case before stated. There is no certain form of submitting the case, by the sessions, to the judgment of this court; nor any occasion to do it at all. If this reference to the judge of assize was only of a part of the case, it was an impertinent reference. The sessions might hear further evidence; and yet no further fact might appear to them: if there had, it is probable they would have stated it. Mr. *J. Probyn*.—The sessions do not always refer the whole case to the judge of assize: sometimes they refer only a particular point; and reserve the final determination of the whole matter to themselves. The sessions might therefore hear further evidence concerning the fraud; though they could have no kind of occasion to hear further evidence to the facts agreed to be truly stated. The court took some time to consider. And now—Lord *Hardwicke* said, the question upon the merits was, whether it sufficiently appeared, upon the facts stated, that this was a fraudulent settlement: we thought it did not. But then the question was, whether the whole fact appeared to us; because the sessions adjudge the purchase to be fraudulent, upon hearing further evidence. I own I thought the whole case was sufficiently before us: otherwise, the justices must have done a very impertinent thing in representing this to be a true state of the case. It could not be a true state of the case, if they heard further evidence to new facts. I dare say that (if the truth was known) that further evidence was only of what passed before the judge of assize to whom it had been referred. Mr. *J. Page* and Mr. *J. Lee* held the same opinion as before: and Mr. *J. Page* called it blowing hot and cold, unless the case stated as the true one was taken to be the whole state of the facts. Both orders were quashed.

Two justices removed *Thomas Wills, Richard, Thomas, Mary, John and Settlement Alexander* his children from *Sowton* to *Sydbury* in *Devonshire*: and upon ap- gained by e-
 peal to the sessions, they vacate the order of the two justices. On *Satur- state, with 40*
day 28th October last, a motion was made to quash this order of sessions. days resi-
 Case—Upon complaint made by the churchwardens and overseers of such residence
Sowton to two justices of peace (*Richard Duke* and *Richard Bearvis*, es- be not succes-
 quires,) that *Thomas Wills, R. T. M. J.* and *A.* his children lately in- five, nor upon
 truded into their said parish and are likely to become chargeable there, the estate, but
 they, upon examination and hearing of all parties, find the allegation to, only lodging
 be true, and that the said *Thomas Wills, R. T. M. J.* and *A.* his children in the parish.
 were last legally settled in the parish of *Sydbury*: therefore they adjudge 1 Bur. Sett.
 that the said *Thomas Wills, R. T. M. J.* and *A.* his children are likely to Ca. 125, Hil.
 become chargeable to the said parish of *Sowton*, and that the said parish 12 Geo. 2,
 of *Sydbury* is the place of their last legal settlement, and that they ought (Feb. 8. 1738)
 to be removed to the said parish of *Sydbury*, as the law, in that case made 2 Sess. Ca.
 and provided, directs and appoints. And then they make an order for No. 150. S.C.
 their removal to *Sydbury*. Afterwards, the quarter-sessions make an order
 as follows, (and the order of sessions is signed and sealed by the two justices

only who made the first order; though many others are named in the caption.) Upon hearing the differences between the overseers of the poor of the parishes of *Sowton* and *Sydbury* in this county, and on the appeal of the said officers of *Sydbury* from an order lately made by *R. D.* and *R. B.* esquires, two of his majesty's justices of the peace of this county (one of the *quorum*) for the removal of *Thomas Wills*, *R. T. M. J.* and *A.* his children, poor persons, from the said parish of *Sowton* to the said parish of *Sydbury*, as the place of their last legal settlement; it appearing unto this court that the said *T. W.* the father, for several years together rented an estate in the said parish of *Sowton* of upwards of 100 *l.* a year, and thereby gained a legal settlement there, for himself and his said children; and that being considerably in arrear for the rent of the said estate, his goods were distrained for such rent; and after such distress, he the said *T. W.* quitted the said estate to his landlord; and having an estate in his own right, for some term or terms of years, in the said parish of *Sydbury*, of 19 *l.* 10 *s.* a year, in the possession of one *Greenlade* as tenant to him thereof for a term of years then unexpired, on or about the 2d of *November* last, left his said children, (the said *R.* then of about the age of 22 years, the said *T.* of about the age of 19 years, the said *M.* then about 16 years old, the said *J.* about 13, and the said *A.* about 8 years old,) at a public alehouse in the said parish of *Sowton*, none of the said children having then or since gained any settlement by any act of their own, and went into the said parish of *Sydbury*; and in consideration of 8 *l.* paid him by his said tenant, accepted a surrender of the said term, and had possession of the said premises in *Sydbury* delivered to him, and the keys of the house thereof; and from the time of his so going into the said parish of *Sydbury*, lodged at a public house there, about half a mile distant from the said premises, and there tarried for about the space of five weeks, and in that time looked after his said estate and employed workmen to make the hedges, and cut wood thereon and sold the same, and employed persons to weed some turnips; and went from the said parish of *Sydbury* to the said parish of *Sowton* to see his children, and tarried there about a week; and went again to the said parish of *Sydbury*, and lodged at the said public house, and looked after his said estate and managed the same as aforesaid, and frequently went into the said parish of *Sowton* to see his children as aforesaid, and to other parishes, to see his friends, and as his business and occasions required; and that he was in the said parish of *Sydbury*, lodging as aforesaid, from the said 2d of *November* till some time in *April* following, and took the same for his home or habitation, apprehending he had no other; and that some time in the said month of *April* he conveyed away his estate and interest in the said premises and came back to *Sowton*; whereupon the said order was made; and that he was in *Sydbury* more than 40 days in the whole, but did not tarry nor was there 40 days successively or at any one time, but was as long time absent, in the time aforesaid, from the said parish of *Sydbury*, as he was there; but that he had no bedding or any household goods in the said house on the said premises, nor any stock thereon, nor paid any taxes or rates within that time

time: and that whilst he was in the said parish of *Sydbury*, he always lodged at the said public house as a guest or traveller, having made no agreement for his diet or lodging; and that he sometimes eat with the family, but generally provided his own meat, and paid only for his drink as other guests, the master of the said public house not expecting any thing for his lodging and for what he did eat with the said family; and that there was no particular room or bed in the said public house kept or agreed to be kept for him; but that he lodged sometimes in one bed and sometimes in another in the said house, as best suited the convenience of the family, and according as they had other guests. And this court (the sessions) being of opinion that the said *Thomas Wills* the father did not, by his having such estate and his so being in the said parish of *Sydbury* as aforesaid gain any settlement in the said parish for himself or any of his said children, doth therefore vacate and make void the said order: and the same is hereby made null and void. *R. Beavis.* (L S) *R. Duke.* (L S) This case was first argued on *Saturday 25th of November* last: but was then adjourned, in order for the judges to have copies of the order; because the objections arose upon the state of the case. It was now debated again. The counsel for the motion argued, that *Thomas Wills's* settlement appeared plainly to be in *Sydbury*; having come thither to live upon his own; and having been irremovable from it; and having resided there more than 40 days in the whole. And it was not necessary to reside in his own house: residing in the parish is sufficient. The counsel for the parish of *Sydbury* urged, that this man and his children were once legally settled in *Sowton*. That the order does not state what term he had in this estate at *Sydbury*; or how he came by it; or whether it was a beneficial interest: (and the court will not presume any of these matters.) Nor is the manner of his living and residing in this parish sufficient. It is not sufficient unless the person comes to reside as a parishioner, and with a design to settle and inhabit: for without that, it was insisted by them, that he could not gain a settlement, but that was far from being this man's case. He was settled at *Sowton*, and left all his family there. He did not remove with his family, nor reside upon the estate; but lodged at a public house as a guest or traveller; and consequently not as an inhabitant: and he did not reside there for 40 days together; but was as long absent as present. *Lee* lord chief justice—The question is, whether here was such an interest in *Thomas Wills* in this estate in *Sydbury*, at the time when he went into the parish of *Sydbury*, as that it can be considered as his own, distinguished from a rack-rented estate. (For it is not mentioned as an acquisition by purchase: so that the act that requires a consideration of 30*l. bond fide* to be paid, is out of the case. If he came to the estate by act of law, the act of 13 & 14 C. 2, c. 12, relating to vagrants, does not extend to it; nor is the *quantum* of the estate, in such a case, material. The case of the leasehold which was the man's own, and was determined to make a settlement, was of very small value. This fact is not so fully set out as it might have been: for the order does not express how he came to the estate. But nevertheless I should think it a

beneficial interest: at least, we are not authorised to say that he came to it by purchase; (which is the only way to bring it within the act of parliament, which requires it to be of thirty pounds value.) In the case of *Sundriss*.—It appeared to be his own estate; and therefore not within the statute of 13 & 14 C. 2, c. 12, as an intruder into a parish; and consequently, not subject to removal. Then as to this man's residence—A residence in any place for 40 days, being irremovable from thence, gains a settlement. *P. 11 Ann.* between the parishes of *Harrow* and *Edgware*. (*Fortes. rep. 310*) There is sufficient stated here, to shew that he had quitted the other place, and came to *Sydbury* to make it his home and habitation. And by the old law, a man after three days was looked upon as an inhabitant: the first day, he was a stranger; the second, a guest; the third, an inhabitant. It makes no difference, whether he was at his own house, or at another person's, or at an alehouse: he was 40 days in an irremovable state, in *Sydbury*. The only question is whether he gained a settlement in *Sydbury*: for if he did, his losing his former settlement in *Sowton* is consequential upon it, and follows of course. Upon the whole, I think it is a settlement in *Sydbury*. And you all agree that the children must go with the father; as they have not gained any settlement of their own, and remain part of his family. The other three judges concurred in the same opinion. They said the order might indeed have been more fully stated; (*i. e.* whether he came in by purchase, or by descent, executorship, &c.) But they could not intend it to be by purchase under 30*l.* If they should intend it a purchase at all, they must intend it to be for a consideration of more than 30*l.* For if less, it should have been shewn on the other side. The facts stated are acts of occupation, and evidences of enjoyment: and 40 days residence in the parish in the whole; tho' not successive, is sufficient to gain him a settlement. *Per cur.* Rule to quash the order of sessions, and confirm the original order.

Settlement gained by estate of less than 30*l.* value, when the owner comes to it by gift or devise, &c. 2 Bur. Sett. Ca. 386, Hil. 29 Geo. 2. (Feb. 5, 1746) *Rex v. inhabitants of Marwood.* Two justices made an order for the removal of *Thomas Conibear* and *Mary* his wife from *Kentisbury* to *Marwood* (both in *Devonshire*;) and the sessions, upon appeal, confirmed that order. Special case—The paupers (*Thomas Conibear* and *Mary* his wife) in 1733, were removed by an order of two justices, from *Kentisbury* to *Marwood*, as the place of their then legal settlement: which order was not appealed from. Some years after, the said paupers returning into *Kentisbury* without a certificate, were committed for such offence to *Bridewell*. Some time after, *Henry Slocombe*, father of the said *Mary*, being possessed of a cottage-house, garden and plot of ground in *Kentisbury* aforesaid, for the residue of a term of ninety-nine years then determinable on the death of one *Joan Slocombe*, (the consideration money for the purchase whereof, as appeared by the counterpart of the lease thereof granted in 1689, produced and read in evidence, for ninety-nine years determinable on three lives, amounted but to twenty shillings,) by his deed-poll dated 25th July 1749, in consideration of his natural love and affection to his said daughter *Mary*, did give and grant the said premises, (except the standing of a bed in one room, and a way

to

to and from the same, to his said daughter *Mary*, being then the wife of the said *Thomas Conibear*; to hold to the said *Mary*, for her life; and afterwards, upon trust for her daughter, during his interest therein. That thereupon, the said paupers returned again into the said parish of *Kentisbury*; and entered thereon, and lived in such house; and possessed and enjoyed the said estate; and paid the high rent (10 s. a year) for several years; until the lease determined by the death of the said *Joan*: when they were again removed, by virtue of such other order, to the said parish of *Marwood*; who have appealed therefrom. The sessions are of opinion and do adjudge, that the said paupers, by having such house, and living therein, and possessing and enjoying the said estate, did not gain any settlement in *Kentisbury* aforesaid; and do therefore ratify and confirm the said order. On *Thursday* 27th *Nov.* last, a motion was made by Mr. *Cox* (of *Lincoln's Inn*) to quash these orders. His objection was—that the justices have no power to remove a man from his own estate: and if he remains forty days upon his own, he gains a settlement thereby, and his former settlement is at an end. 2 *Salk.* 524, *pl.* 2, between the parishes of *Ryship* and *Harrow*—living in a parish where one has land, gains a settlement without notice: for the act never meant to banish men from the enjoyment of their own lands. Rule to shew cause. Mr. *Gould* now shewed cause. The cases that might be cited against him he said were 2 *Salk.* 524, *pl.* 2, between the parishes of *Ryship* and *Harrow*, *H.* 8 *W.* 3; *B. R.* Living on a man's own land gains a settlement. 1 *Strange* 502; between the parishes of *Cranley* and *St. Mary Guilford*, *H.* 8 *G.* 1. A lease at will gains a settlement. 1 *Str.* 608, between the parishes of *Ashbrittle* and *Wiley*, *M.* 11 *G.* 2. Long possession, and a descent cast, gain a settlement. 2 *Str.* 908, *Tr.* 7 & 8 *G.* 2, *Rex v. inhabitants of Sundrists*; a man cannot be removed from his own, devised to him; though only a term of 5 s. *per ann.* 1 *Str.* 97, between the parishes of *Mursley* and *Grandborough* in *Bucks*, *Tr.* 4 *G.* 1. A man cannot be removed from his own; though only 1 s. a year, and for a term of years, which came to the wife as administratrix. 1 *Str.* 163, between the parishes of *Burclear* and *East Woodbay*. *P.* 5 *G.* 1. A copyhold by descent, of ever so small value, gains a settlement, even to a certificate-man. But all these cases, he said, are precedent to the statute of 9 *G.* 1, *c.* 7, and he did not controvert them. But under that act the present case is restrained; so that it shall not gain a settlement: for it is expressly provided thereby that where the purchase money is under 30 *l.* the purchaser shall not gain a settlement longer than his interest in the estate continues. This act is indeed confined to purchases, and does not extend to estates by inheritance or even by devise. But here was only a grant merely voluntary, in consideration of natural love and affection; of a cottage, whereof the original consideration-money was only twenty shillings; and the interest in it was only for years, determinable on three lives, and now actually determined. So that this case is clearly within this act of parliament. Mr. *Cox*, on the other side, observed that Mr. *Gould* admits that a person cannot be removed from his own; and that this will be a settlement in *Kentisbury*, if it

it be not a case within 9 G. 1, c. 7, *sect.* 5. Now this is not a purchase within the meaning of this act. It was a free donation, without any pecuniary consideration at all. The consideration was natural love and affection; and the gift was to the daughter, not to her husband; so that the husband takes *jure uxoris*; and it vests in him by act of law, not by the deed. Therefore the husband was and is irremovable. He cited *Hob.* 203, *Swaine v. Holman & Ux.* and *Co. Lit.* 300, *a.* to prove that the husband comes in by act of law. In 3 *Peere Williams* 40, *Sir Jermin Davers et al. v. Sir Jermin Dewes et al.*, Lady Dover was holden not to take her distributory share of the leasehold estates by purchase, under the devise; but by operation of law. And it has been determined in this court that a devise shall not be considered as a purchase, within this act, notwithstanding the case of *Roper and Radcliffe*. In 1 *Sir J. Str.* 97, *Murley and Grandborough*—the circumstances are in point to the present. It proves that a man may gain a settlement in right of a term which his wife has; (though the case was in 4 G. 1, which was before the statute;) and it was holden that a person coming to an estate by inheritance, devise, or other such act of law, was not to be considered as a purchaser. The original consideration being here stated to have been only 20*s.* proves nothing of the present value. For that was so long ago as in 1689; and the value may be greatly altered since: it might have been a building-lease. Mr. Gould replied that the husband's assent to the grant makes him a purchaser. There is no similar case subsequent to the act of parliament of 9 G. 1. Lord chief justice *Ryder* said he was extremely clear about this matter. The 9 G. 1, c. 7, was intended to prevent parishes from being fraudulently incumbered, under small fraudulent conveyances; and it only intended to exclude all purchases of cottages under the value of 30*l.* from giving a settlement longer than the continuance of the interest: (for a man ought not to be hindered from living upon his own and being irremovable from it, as long as his property continues, and he continues to reside upon it.) There have been three questions introduced upon this act: one, on the meaning of the word purchase; the next, whether the husband in this case, be a purchaser, (whatever his wife may be;) and thirdly, whether this consideration be a consideration under 30*l.* supposing him to be a purchaser.) Now first, this is not a purchase within the meaning of the act: for the word purchase is not here to be taken in the largest extent of it, but is confined to cases where a pecuniary consideration is paid. In the great case of *Roper v. Radcliffe*, the word purchaser was taken according to the meaning and intention of the act of 11 & 12 *W.* 3, c. 4. And in the case of lord *Derwentwater*, the person was considered not as a purchaser within the meaning of that same act. But here, a pauper's wife has an estate assigned over to her, out of love and affection, without any money-consideration, by her own father: which cannot be such a purchase as this act intends. A devise is not within this act. Indeed if the husband had paid a consideration, he would have been a purchaser, though the conveyance had been made to his wife. In the case of 3 *Peere Williams* 40, and other cases, it has been determined that a
wife

wife administratrix or executrix shall not, if she is a Papist, take terms or other interests in lands, under the will; because a Papist is disabled by 11 & 12 W. 3, c. 4, from purchasing; and taking under a will is * purchasing. But in the present case, the husband is not to be considered as a purchaser, but as being out of this act of 9 Geo. 1. And therefore he acquired a settlement in *Kentisbury*. Consequently, the sessions have determined wrong. The three other judges concurred with the chief justice in opinion that this act of 9 G. 1, does not extend to devises, or gifts, or other methods of acquisition; but is confined to the particular case of purchases for money-considerations under 30l. For, on the contrary construction, Mr. Justice *Wilmot* observed, no devise or gift or marriage settlement would gain a settlement, unless a pecuniary consideration was paid. He said that this act was plainly intended only against gaining settlements by purchases for small money-considerations: and the word purchaser is not to be taken in its strict legal sense, but according to the intention of the legislature; which was regarded in the case of *Roper* and *Radcliffe*, and ought to be so in this case; though that intention was very different in the two cases; for the act of parliament there in question intended the general sense of the word; this act, the confined one. *Per cur.* unanimously—Both orders quashed.

Two justices made an order for the removal of *Elizabeth Evans*, widow, from *Mickleton* in the county of *Gloucester* to *Ilmington* in the county of *Warwick*: and the sessions, upon an appeal, confirmed that order. The order of sessions states the case thus—*Theophilus Evans*, being legally settled in *Ilmington*, about 33 years ago married the above-named *Elizabeth Evans* his wife, then *Elizabeth Stanley* Spinster; who had before, by indenture bearing date the 25th day of *March* 1724, purchased a leasehold tenement situate in the said parish of *Mickleton*, for the sum of six pounds, for the remainder of a term of 1000 years. The said *Elizabeth* resided in the said tenement for about nine years before her intermarrying with the said *Theophilus Evans*: and after such intermarriage, the said *Theophilus Evans*, together with the said *Elizabeth* his wife, the pauper, resided in the said tenement about sixteen years; when the said *Theophilus Evans* died, leaving the said *Elizabeth* surviving him. The said *Elizabeth Evans*, after her said husband's death, continued to reside in the said tenement till about *Christmas* last (1765;) when she sold and conveyed the same tenement to *James Stanley*, for the sum of six pounds; and was afterwards removed from the said parish of *Mickleton* to the said parish of *Ilmington*. Mr. *Selwin* had before moved (on the first *Thursday* in this term) to quash these orders; and had a rule to shew cause. Mr. *Vernon* and Mr. *Morton*, (on behalf of the parish of *Mickleton*) now shewed cause against quashing them. This question depends on 9 G. 1, c. 7, sect. 5, which says that no person shall acquire any settlement, by virtue of any purchase for a consideration of less than 30l. value, *bonâ fide* paid, for any longer time than such person shall inhabit thereon. Now this transaction, they argued, is elusive of the statute: it is a purchase, for the price of 6l. only, of a lease.

* See 3 Peere Wms. 46.

A woman purchased a leasehold tenement for 6l. and afterwards married; upon her marriage, it vested in her husband; and by 40 days residence, he gained a settlement: the husband died first: his settlement communicated itself to the wife. 2 Bur. Sett. Ca. 566. (June 18. 1766) Rex v. inhabitants of Ilmington.

leasehold estate for a term of 1000 years. The words of the act are — for or by virtue of any purchase under 30*l.* value. This term would survive to the wife, if she outlived her husband: and if he had survived her, he could not have had it without taking out administration to his wife. It was clearly a purchase by the wife: and the husband had no claim to it, but by virtue of that purchase. No similar case has ever been before the court. Mr. *Selwin*, contra, (for the parish of *Ilmington*,) owned it to be a new case; but said it was within the reason of cases heretofore determined. In cases of descent, a settlement is gained: though the original purchase be under 30*l.* value. And there is as much reason why a settlement should be gained in the present case. There is no fraud in this transaction: and here is a residence of 42 years, in the whole. The act of 13 & 14 C. 2, c. 12, is the first statute that gives power to remove a person from their place of residence at all: and even after that statute, till 9 G. 1, c. 7, forty days residence upon a person's own property, would gain a settlement. The reason given by Lord Chief Justice *Ryder*, in the case of *Rex v. inhabitants of Marwood*, H. 29 G. 2. B. R. will hold in this case. So, in the case of *Rex v. inhabitant of Uffculme*, Lord *Mansfield* reasons to the like effect. And it appears from both those resolutions, that there is a distinction between an actual purchase, and a legal purchase (in the technical sense of the term purchase.) This woman had an estate vested in her, when *Evans* married her; which, upon the marriage, vested in him. There is a parliamentary exposition of the meaning of the terms used in 9 G. 1. It is in the act of 10 Ann. c. 23, sect. 2, (the act to prevent fraudulent conveyances in order to multiply votes for electing knights of shires to serve in parliament,) which prohibits voting in right of lands which they have not had for a year before; unless they came to such estate by descent, marriage, marriage-settlement, devise, presentation, or promotion to some office. Here, the husband gained a settlement in *Mickleton* by 40 days residence upon his own estate: and his settlement communicated itself to the wife. Therefore the wife ought not to have been removed from *Mickleton*: and consequently, both these orders ought to be quashed. Sir *Fletcher Norton* was on the same side: but Lord *Mansfield* stopt him from going on; declaring himself of opinion with Mr. *Selwin*; both for his reasons, and upon his authorities. The other judges declared themselves likewise to be of the same opinion. Whereupon — The rule was made absolute for quashing both orders. Both orders quashed.

Where the wife resides 40 days upon the husband's own estate, without her husband, she is not removable when

Two justices removed *Susannah Gates*, the wife of *William Gates*, and *Robert*, *William*, *Edward*, and *Susannah*, her four children (one of them nine years of age, and the other three under seven) from *Aythrop Rooding* to *White Rooding*: which order was quashed by the sessions, upon an appeal. The substance of the case was, that *William Gates*, this woman's husband, having been legally settled at *White Rooding*, went away and left his wife and children. Whereupon, she and her children went and lived for the space of forty days, without her husband, in a copyhold tenement of

of her husband's own, at *Aythrop Rooding*. But legal notice to depart was given to her, within the forty days, by *Aythrop Rooding*: which she not doing, two justices made this order for removing her, as being likely to become chargeable, from *Aythrop Rooding* to *White Rooding*; which they adjudged to be the last legal settlement of her husband. But the sessions, conceiving that the wife, though without her husband, could not be removed from her husband's own estate, quashed the order. On *Saturday* the 22d of this *November* 1756, *Sir Richard Lloyd* moved to quash this order of sessions, and to affirm the original order. Rule to shew cause. *Mr. Gould* and *Mr. Norton* now shewed cause. *Sir Richard Lloyd*, who was for quashing the order of sessions, argued, that though the husband had it in his power indeed to have gained himself a settlement at *Aythrop Rooding*, by going and residing there forty days upon his own estate; yet it could never be his last legal settlement, unless he himself had actually resided there for forty days: because, if it should be otherwise, a man who had property in various parishes, might be last legally settled in all of them at the same time. *Mr. Gould* and *Mr. Norton* admitted, that neither the wife and children nor even the husband himself could have been removed to this place where the husband had never resided. But they insisted that they were irremovable from it, as they were inhabiting upon their own estate: for they did not come to inhabit there as intruders or vagrants, but to reside upon their own; and no one can be removed from their own, be the value ever so small, or let them come by it in any manner. But these persons are removed as intruders, and as only likely to become chargeable. *Sir Richard Lloyd* replied, That she came to *Aythrop Rooding* without her husband's consent. He alledged, that being irremovable for forty days, and gaining a settlement, are convertible terms; and that every person likely to become chargeable to a parish, is removable from it; and that this woman, with her children, certainly rambled from her husband's last legal settlement; and went to the other place without his consent; which she had no right to do. The settlement of the children must follow that of the father. The court, *viz.* *Lord Mansfield*, *Mr. Justice Denison*, and *Mr. Justice Foster*, (*Lord Commissioner Wilmot* being engaged in the Court of *Chancery*;) were unanimous and clear, That the two justices had no power to remove her from her husband's own property, upon her being only likely to become chargeable to the parish where it lay. *Lord Mansfield* said, that as no authority was produced on either side, the court must determine the case upon the reason of the thing and the laws relating to the poor. This is the husband's own estate: and he himself certainly might have gone and gained a settlement there, by residing forty days. It is stated, generally, to be his own: it does not appear to have been a purchase within 9 G. 1, c. 7: nor does it at all appear how he came by it. Neither does it appear that the wife went to reside upon it, against the husband's consent. The old settlement remains as it was: she is only irremovable from the property of her husband. And so it is, in the case of soldiers in the king's service. She can't be removed from her husband's property, upon being only likely to

likely to become chargeable. 2 Bur. Sett. Ca. 412. Mich. 30 G. 2. (Nov. 29, 1759) Rex v. inhabitants of Aythrop Rooding.

become chargeable. This is agreeable to the intent of the statutes, and to the reason of the thing. Mr. Justice *Denison*—Gaining a settlement, and being irremovable from a place for forty days, are not convertible terms. The husband's settlement remains as it was: but, nevertheless, the wife is not removable from his estate: for she is not within the intent and meaning of the 13 & 14 C. 2, c. 12, nor is it agreeable to the liberty of mankind, that a person should be removed from their own estate. This woman's going thither does not appear to be against the consent of her husband: it is rather to be presumed that she went with his consent. Nor is *Aythrop Rooding* obliged to maintain her: and consequently they are not hurt by her being there. If she will stay there, and can't maintain herself, she must look to that. The two justices have therefore done wrong in removing her as being only likely to become chargeable to *Aythrop Rooding*. The majus and minus of the estate is out of the question: it makes no difference in the present case, be it greater or be it less in value. Mr. Justice *Foster* held that this woman had a natural right, or at least a matrimonial right to go to her husband's estate: and as there does not appear to be any dissent of her husband, it should rather be presumed that he consented. The husband himself would not have been removable from his own, if he had gone thither. His Right is under *Magna Charta*: none shall be disseised of his freehold. This woman was not become chargeable to *Aythrop Rooding*. If she had become actually chargeable to that parish, I think that by common law they must have maintained her. This is the common law, so far back as from the time of the Mirror. As to the children—The eldest is but nine years old, and is part of the woman's family: and she is head of the family, in the absence of her husband. And we can't presume a child of only nine years of age to have gained a settlement for itself. The rest of the children are under seven: they must therefore remain with their mother for nurture. Per cur.—Order of sessions affirmed: and the order of two justices quashed.

Settlement
not gained by
estate of 14l.
a year by de-
secent; because
the interest in
it determined
before 40 days
residence. 1
Bur. Sett. Ca.
307, Mich.
25 Geo. 2.
(Nov. 8, 1751)
Rex v. inha-
bitants of
West Shefford.

Two justices made an order for the removal of *Catharine Bird* widow, and *Lawrence* and *Mary* her son and daughter by *John Bird* her late husband deceased, from *West Shefford* in *Berkshire* to *Baydon* in *Wiltshire*: and, upon appeal, the sessions quashed that order. The case stated is, in substance, thus—*John Bird*, late husband of the said *Catharine Bird* and father of the said *Lawrence* and *Mary*, being legally settled in *Baydon*, came by certificate from *Baydon* to *West Shefford*: and, during the time that he resided in *West Shefford* under such certificate, he became beneficially intitled to a leasehold estate of fourteen pounds a year, situate in *West Shefford*; which had been granted by the trustees of the late Sir *William Trumbull* to the father of the said *John Bird* and his assigns for ninety-nine years determinable on the death of *John Bird* the grandfather, the wife of *John Bird* the grandfather, and of this *John Bird* the father. That the said *John Bird* the husband of the said *Catharine* the pauper and father of the said *Lawrence* and *Mary*, being the last surviving life in the said lease mentioned, entered upon the said estate on the 17th of November 1750, and was possessed

resided thereof; and also resided thereon, from the time he so entered to the day of his death, which happened on the 15th day of *December* 1750, being twenty-eight days and no more. That upon the death of the said *John Bird* the father, (his being the last surviving life as aforesaid) the estate under the said lease determined; and the said wife and children of the said *John Bird* had no further interest whatever in the said leasehold estate. And that they or any of them have not gained any settlement, either than what they derive under the said *John Bird* the husband of the said *Catharine* and father of the said *Laurence* and *Mary*, by virtue of the said leasehold estate as aforesaid in the said parish of *West Shefford*. On *Monday* 17th of *June* last, a motion was made by Mr. *Ford*, to quash this order of sessions. His objection to it was, that though the man when living was not removable (as he acknowledged) from this estate of his own; yet, as he had never resided forty days upon it, neither he if he were now living, nor his family were removable to it: for by the act of 13 & 14 C. 2, c. 12, sect. 1, the removal can only be to the place where the pauper has resided by the space of forty days. Rule to shew cause. The counsel who shewed cause on the 31st of *October* last, made this short question, whether a beneficial interest is not sufficient to gain a settlement, without a forty days residence: and they argued that it was sufficient. His being a certificate-man did not preclude him from thus gaining a settlement. The case between the parishes of *Burcler* and *East Woodbey* *, *P. 5 G. 2*, is a determination that a certificate-man shall not be precluded from taking advantage of a beneficial interest accruing to him. On 43 *Eliz. c. 2*, no particular time of residence is limited. The question concerning forty days arises only upon 13 & 14 C. 2, c. 12, which fixes the complaint to be made within forty days after coming to settle in a tenement under 10*l.* a year. [It does so: see sect. 1. But the same section directs the removal to be to the parish where the pauper was last legally settled for the space of forty days.] This man had resided a month in the parish, (*viz.* twenty-eight days,) taking it even on 43 *Eliz.* And in the case of *Weston Rivers* and *St. Peter's, Marlborough*, 2 *Salk.* 493, Lord Chief Justice *Holt* held that before 13 & 14 C. 2, c. 12, was made, a month's residence in a parish made the party an inhabitant. And the present case is not within either the words or meaning of the statute of 13 & 14 C. 2, c. 12, nor within any determination upon it. The words relate to persons going about as vagabonds, from parish to parish: whereas this man was an owner of land under a beneficial lease. The meaning of this act of 13 & 14 C. 2, appears from the subsequent acts: particularly the 1 *J. 2, c. 17*, and 3 & 4 *W. & M.* The 1 *J. 2, c. 17, sect. 3*, requires notice in writing to be delivered by the person to the parish-officers, of his coming into the parish; and directs that the forty days be computed only from the delivery of such notice; and the 3 & 4 *W. & M. c. 11, sect. 3*, directs them to be computed from the publication of such notice in the church. The reason of the notice is that the parish may, within the forty days, make inquiry about the pauper, in order to remove him. But here, it is agreed, that he was always irremovable. Consequently, this notice can not concern him, who

* 1 Sir John Strange 163.

* Fortescue's
Reports 310,
and Foley's
Poor Laws
294.
§ See Sessions
Cases, Vol. 1.
pa. 133, No.
122, and 1 Sir
John Strange
27.

never could be removed. Neither is this case within any of the determinations upon 13 & 14 C. 2, c. 12. In the case of *Ryship and Harrow*, 8 W. 3, 2 Salk. 524. pl. 2 per Holt Chief Justice, living in a parish where one has land of his own, gains a settlement without notice: for the act of parliament never meant to banish men from the enjoyment of their own lands. No limited time of living is fixed there: it is general—living in a parish. It seems as if that case was freehold: but in *M. 12 Ann.* between the parishes of *Harrow* and *Edgeware* *, it was extended to copyhold. And it has been extended to the husband of an administratrix of a leasehold: § *M. 4 G. 2*, between the parishes of *Mursley* and *Grandborough*; the man was only intitled as husband of an administratrix in trust, and in right of his wife. In the case of *Eundriß and Hever*, *Tr. 7 & 8 G. 2*, a beneficial lease of small value, in the hands of an executor and devisee was holden not to be within the act. In the case of *Stanfield*, *P. 16 G. 2*, an assignment of a term of small value renders irremovable. Persons having interests of property are not within the act: nor are they obliged to give notice of their coming into a parish. The counsel for *West Shefford* argued that it does not clearly appear that this estate was the pauper's own estate. Mere possession can not give a settlement, nor a bare descent: for, at that rate, a man might be settled in many parishes at one time, if many tenements should descend to him together. The question however, if it be taken that it was his own estate, is whether a man or his family can be removed to what was once his own settlement; after his interest in it is expired; and which interest was determined before he had resided upon it forty days. They argued in the negative. And they denied it to be true (though it has often been asserted) that being irremovable, and being settled, are convertible terms. Before the 13 & 14 C. 2, c. 12, paupers could not be sent to any particular parish. This act (*sect. 1.*) gives the justices power to send them to the parish where they were last legally settled for forty days. But a man can't be said to be settled forty days, till he has remained forty days. And so it has been always understood, when the matter has been under consideration. In *Tr. 13 G. 2*, between the parishes of *St. Chere* and *St. Nyotts* in *Cornwall*, it was so agreed by the court, that a man can not be sent to the place where he had a beneficial interest, though even a freehold, unless he had resided forty days upon it. In the case of *Sowton and Sydbury*, *H. 12, G. 2.* the only question was, Whether the forty days should be successive: there was no doubt but that forty days residence was necessary. And in *M. 11 G. 1, Rex v. the inhabitants of Wyley* †—There also the residence for forty days was considered as the point whereupon the settlement turned. [See *Sir J. S. 609. accord.*] So it was also, in *Rex v. inhabitants of Hasfield*, *P. 13 G. 2.* Therefore this man gained no settlement, unless he had resided forty days: whereas, in fact, he resided only twenty eight days. The court thought pretty clearly, that forty days residence was necessary to gain a settlement. They ordered it, however, to stand over. And upon it's being mentioned again, now, Lord C. Just. *Lee* said he had looked a little into it: and all the cases he could find, agreed in holding a forty days residence to be necessary, in order

† See 1 Sir J.
Strange 608,
Ashbottle and
Wyley.

order to found an order of removal to a place. Mr. Justice *Denison*—So I think. And I look upon this to have been settled, since the case of *Mursley and Grandborough* ||: in which it was holden by Lord chief-justice *M 4 G 2. V.* *Pratt*, Mr. Justice *Eyre*, and Mr. Justice *Fortescue*, that any person who Sessions Cases, vol. 1, p. 133. No. 122, and 1 Sir John Strange 97, both S. C. but not so full as a MS. report in my own hands; nor indeed at all coming up to the present point in question: which mine does, and agrees exactly with the representation of the opinion of the court here given.

Two justices made an order for the removal of *Elizabeth Tansur* the widow of *Edward Tansur* from *South Kilworth* in the county of *Leicester* to *Dunchurch* in the county of *Warwick*: and the sessions, upon an appeal, confirmed the order of the two justices, and discharged *South Kilworth* of the pauper *Elizabeth Tansur*; subject to the opinion of this court on the following facts; viz. *Edward Tansur* was duly certificated from *Dunchurch* to *South Kilworth*; where he resided with his wife and family to the time of his death. Upon the trial of this appeal, it appeared by parol evidence of the pauper and her son only, (which evidence was objected to by the counsel for the respondents) that about twenty-five years since, the pauper and her husband the said *Edward Tansur* were joint purchasers of a house, yard and garden place at *South Kilworth*; and paid for the purchase thereof 19*l.* and upwards. And *Edward Tansur* laid out about 15*l.* more, to put it in repair; and built a new shop on part of the premises; and was taxed after the rate of a tenement of 30*l.* value, for the first two years after he bought it; and resided in the said purchased premises, till the time of his death. After *Edward Tansur's* death, his widow (the pauper) continued in possession of the said house and premises for about ten months; and then went to service for about five years; and during that time, she let the said premises to her son *Edward*, for twenty shillings a year; but declared she could have let it for 30*s.* a year or more, to other persons. The pauper, when she left her service, (which was about three years ago,) returned to her house at *South Kilworth*, and soon after sold the garden-place, for 20*l.* 3*s.* 6*d.* and about the same time, by deed of gift, gave to her son *Walter*, part of the yard, being ten yards in length, and six in breadth, for him to build a house upon. It also appeared by indenture of recovenant dated the 8th of *November* 1763, (which indenture was produced and proved,) that the pauper, in consideration of natural love and affection and of ten pounds, granted the residue of the said

Settlement not gained by estate where the purchase-money was only 19*l.* though 15*l.* more was laid out, to put it in repair; and though the owner was taxed after the rate of a tenement of 30*l.* value. 2 Bur. Sett. Ca. 2553; Hil. 6 Geo. 3, (Feb 11, 1766) Rex v. inhabitants of Dunchurch.

said premises to her son *Edward* and his heirs, to the uses following; viz. as to the parlour, chamber over it, and the pantry (part of the premises,) to the use of the pauper for life, sans waste; remainder to *Edward*, in fee; and as to the residue of the premises, to the use of the said *Edward* in fee; and *Edward* covenanted to keep the whole of the premises in repair. It also appeared, by parol evidence, that the pauper continued to dwell in that part of the house which was so limited to her for her life, 'till she applied to the parish-officers, for relief: and being told, by a justice of peace for the said county of *Leicester*, (who was applied to on that occasion and afterward's signed the order of removal,) that she could not be removed from that parish to *Dunchurch*, whilst she continued to live on her own freehold; she thereupon went out of her own house, for a little time before she was removed; and went to her daughter's house, which is in the same parish; and let her own house to her son for sixpence; and was relieved at her daughter's house, by the parish officers, about a week; and then removed from thence, by order of two justices, to *Dunchurch*, as the place of her legal settlement; notwithstanding she then was, as aforesaid, entitled for her life, to the premises she went out of, in order to her being relieved and removed by order to the parish of *Dunchurch*. On *Wednesday* 13th of *November* last, Mr. *Caldecott* moved to quash these orders: and a rule was made to shew cause. Sir *Fletcher Norton* now shewed cause, on behalf of the inhabitants of *South Kilworth*, why these orders should not be quashed; and was, of course, to maintain that the pauper's settlement was in *Dunchurch* who gave the certificate, and that none was gained in *South Kilworth*. The single question is whether the sessions did right in receiving parol evidence of the settlement of this *Elizabeth Tansur*: to shew her to be settled at *Kilworth*, the parish of *Dunchurch* were obliged to prove a purchase made twenty-five years ago by her husband, and settled upon himself and his wife. Now, in order to this, a deed must be produced unless some foundation is laid for giving parol evidence of the contents of it. But here the justices admitted the woman to give parol evidence of the contents of this deed, without any apparent reason or foundation for so doing. Besides, it is admitting the pauper to prove a title in herself. On the contrary, it was argued by Mr. *Caldecott* and Mr. *Wheeler*, that the settlement of this pauper was in *South Kilworth*. The consideration of the purchase is 19*l.* in money; and he laid out 15*l.* more upon it; which, together, amount to above 30*l.* and it was rated to the poor as a tenement of 30*l.* value. After the husband's death, she had it by survivorship, and resided upon it, and then sold off the value of 20*l.* to one; and 10*l.* to another; and reserved some for herself. It was therefore worth, to her, above 30*l.* And she was resident in her own house when she first applied to the parish-officers for relief. If the objection to the parol evidence be laid out of the case, it will appear that she was settled in *South Kilworth*. And as to her producing the deeds—It was not in her power to produce the deeds; because she had not them in her custody, nor could have them after she sold the estate. The sessions do not try titles: they only inquire after settlements; and must take the best evidence they can get, as to that matter. But here was a scoffment to her

her son. And all the evidence must be taken together: and then, upon the whole, there is enough to shew a settlement in *South Kilworth*. As long as she continued in the parish, she could not be removed. It was not necessary to reside upon it. This happens to be a house: but it might have been land. A residence in an alehouse is sufficient; though not upon the estate itself: it is enough if it be in the same parish. And since she continued irremovable from her own tenement above forty days, she thereby gained a settlement in the parish. To prove that this purchase was equivalent to 30*l.* value, they cited the case between the inhabitants of *St. Paul's Walden and Kimpton*, P. 13 G. 1, B. R: where the fine and court fees which the churchwardens advanced, were added to the purchase-money, to make up the 30*l.* And yet it gained a settlement. And also the case between the inhabitants of *Waddingham and Tedford*, Tr. 8 & 9 G. 2, B. R: where the purchase was only 9*l.* of the purchaser's own money, and a mortgage for 30*l.* more, which he borrowed: and yet this was held to gain a settlement. Mr. *Caldecott* also cited a case in II. 2 G. 2, *Rex v. inhabitants of Benjoe*, *Foley* 255, 256, and *Sessions Cases*, edit. 1750, vol. 2, case 126, pa. 139.—The purchase-money was 25*l.* and the money laid out made it above 30*l.* And it was held, as he said, to make a good settlement; *Reynolds J. Dissentient*. But the court * doubted this case; or rather thought it could not be so, being contrary to the intention of the act of 9 G. 1, c. 7, *sect. 5*. Sir *Fletcher Norton contra*, agreed to take all the state of the case together. But, admitting the evidence to have been properly received; yet here is only a purchase, by a certificate-man, of 19*l.* upon which, 15*l.* was afterwards laid out for repairs; and so was made worth above 30*l.* but it was not originally so, at the time of the purchase. This is not a purchase of 30*l.* value: the consideration *bonâ fide* paid must be 30*l.* A subsequent act cannot make it so, if it was not so at first. As to the cases cited—*Rex v. inhabitants of Benjoe*, was manifestly never adjudged. And in the case of *St. Paul's Walden*, P. 13 G. 1, the fine was part of the purchase-money, though the churchwardens advanced it. As to the *Tedford*-case—The man mortgaged the estate after he had bought it: but he had paid for it, with the money which he had borrowed. The purchase money was all of it *bonâ fide* paid to the vendor: it was no matter, to the vendor, how the purchaser came by it. But it has been objected that she was irremovable out of the parish of *South Kilworth*, as long as she had an estate of her own there, and continued to reside any where within the parish. Answer.—It is stated that she went out of her own into her daughter's house. She did this in order to remove any objection; afterwards let her own, and then applied to be relieved. So that she cannot properly be said to have been removed from her own: for she had quitted her own. In the case of *Sydlbury and Sooton* where the man resided at an alehouse, the estate was not such an estate upon which he could reside. Lord *Mansfield*—The whole question is, whether this woman was a *bonâ fide* purchaser of an estate of 30*l.* value. She cannot be presumed to come to it by descent or executorthip, or any such like act of law; because the contrary appears: and a presumption only stands

See *Foley* 254, and *Sessions Cases*, vol. 2, pa. 127, No, 118.

* There is no rule entered in the rule-book. It was adjourned in *Hilary Term* 1728, 2 G. 2, (as appears by my own note-book) and I believe never came on again. Page and Probyn thought it out of the act of 9 G. 1, and Lord Raymond inclined to think so too: but Reynolds thought it within the act, and that no settlement was gained. Sed adjournatur.

till the contrary be proved. The case of *Rex v. inhabitants of Benjoe*, H. 2 G. 2, was adjourned with a *curia advisare vult*; and no determination appears on the record in the office: therefore that case is no authority. I cannot think the act of 9 G. 1, can be construed in the manner that has been now attempted: it draws the line according to the purchase-money. The letting-in any thing that is subsequent, would overturn the whole act: the act takes the value of the purchase, from the purchase-money actually paid. In the *Tedford* case, of the mortgage-money, it was in fact a purchase of an estate of the value of 39 *l.* though the purchaser might borrow part of the money (upon mortgage) to pay for it. Mr. Justice *Wil-*
mot—Here the husband and wife appear to have been joint purchasers, twenty-five years ago: they took jointly and by entirety: not by moieties. If so, she can only stand in the same situation as her husband did: which is that of a purchaser. No money afterwards laid out, can make the prior purchase to have been of greater value than it really was at the time of making it. Before 9 G. 1, people purchased small interests; and they purchased collusively. To obviate these two inconveniences, the act makes the criterion to be 30 *l. bonâ fide* given; be the real value more or less. Surely subsequent improvements cannot be considered with a retrospect. As to removing a person from their own—She became an object of removal as soon as she had let it to her son. Therefore this case is not like that of *Sowton* and *Sydbury* where the man all along resided at the public house. I am of opinion that she gained no settlement under this freehold. Mr. Justice *Yates*—We must take the whole case together: and from that it appears that this was a joint purchase by husband and wife; and therefore we must consider her as a purchaser. The act of 9 G. 1, is as plain and clear as possible that it must be a purchase of 30 *l.* value at the time of the purchase. And as the statute has made this the criterion, we have no authority, nor is there any reason for us to depart from it. Mr. Justice *Aston* declared his concurrence. Whereupon *Per cur*, unanimously—Rule discharged: and the orders affirmed.

Settlement by hiring and Service.

Settlement
gained by a
general hir-
ing, without
expressing the
particular
time. 1 Bur.
Sett. Ca. 299,
(Jan. 31, 1750)
Rex v. inha-
bitants of
Wincaunton.

Two justices made an order for the removal of *John Forward* and *Sarah* his wife, and *Martha* and *Sarah* their two children, from *Crediton* in the county of *Devon* to *Wincaunton* in *Somersetshire*: and, upon appeal, the sessions confirmed that order. Whereupon this special case is stated.—*John Forward* was born in *Wincaunton*, where he lived with his parents until his age of seventeen; when, being informed that *Samuel Williams* of *Charlton Horethorne* wanted a stout boy, he went and offered to serve him; and the said *Williams*, liking him, hired the pauper to serve him in husbandry, and agreed to give him, meat, drink, washing and lodging, and cloaths when wanted; but no particular time was agreed on; and the pauper apprehended his master might turn him off, or he might have gone away from him, at their pleasure: nevertheless, there was no agreement for that purpose. That thereupon, the pauper continued with and served the said

said *Williams* in *Charlton Horsethorpe* aforesaid for two years and a half: and, at the end of the first three quarters of a year, wanting cloaths, his master provided cloaths for him; and so afterwards, when he had occasion for cloaths. That the pauper afterwards removed into the said parish of *Crediton*: but having gained no settlement there, was removed, with his said wife and family, by virtue of the said order. This court are of opinion and do adjudge that the said pauper gained no settlement by such service in *Charlton Horsethorpe* aforesaid; and do therefore ratify and confirm the said order, &c. On *Friday 23d Nov.* last, a motion was made by *Mr. Gapper*, to quash this order. The question was, whether this be a settlement within the 3 & 4 *W. & M. c. 11.* To prove that a general hiring is a hiring for a year, *Bro. Abr.* title *Labourer*, *pl. 20*, was cited; —which mentions that by the statute of labourers, 24 *Ed. 3, c. 1, quilibet potens in corpore doit servir.* And *Hankford* said that every infant of twelve years, retained, ought to serve*. And *pl. 23, per Hankford—Si Jco face* * *Hankford*
covenant oue un, de moi servir, il viendra en mon service pour un an entier. was then a
And 1 *Inst. 42, b.* If a man retain a servant generally, without express- judge of the
ing any time, the law shall construe it to be for one year: for that retainer common-
is according to law. 23 *Ed. 3, c. 21, &c.* The act of 8 & 9 *W. 3, c. 30,* pleas
only requires a service: the hiring depends upon 3 & 4 *W. & M. c. 11.*
Now here is an express service stated. So that the only question is upon
the hiring. The modern cases cited were *Crowland v. St. John Baptist* in
Peterborough, Viner,—Title—Settlement of the poor; where it was said
he served for a year; the order was held good: for the law presumes he
was hired for a year. And *Jessop* and *Missenden* parishes, *Trin. 13 Ann.*
where *Sarah Barnes* came as a hired servant, and lived with her father for
a year in a little cottage at *Missenden*. The father gave her 10s. a year,
and what else she could get: she was holden to be settled at *Missenden*.
And *Rex v. inhabitants of Putney*, 13 to 15 *G. 2.* These were cited to
prove that a general retainer is a retainer for a year. Note—This point
was (in *Mich. Term 1741, 15 G. 2.*) taken for granted and undoubted in
this last cited case, by Lord Chief-justice *Lee*, Mr. Justice *Page*, and Mr.
Justice *Wright*; though the case itself was never determined. The coun-
sel who now shewed cause argued that this was only a hiring at will:
though they admitted that the old books do prove that a general hiring
is, upon the statute of labourers, a hiring for a year. But yet the circum-
stances of the hiring may shew the intention to be otherwise. And this
hiring seems, upon the circumstances of it, to be only at the will of each.
The rule is not to be taken so strictly and absolutely, as that it cannot be
otherwise; but only that, *primâ facie*, a general hiring is a hiring for a
year. Lord Chief-justice *Lee*—It is agreed that a general hiring is a hir-
ing for a year, according to 1 *Inst. 42, b.* Therefore the only question
is whether the circumstances of this case shew an intention to the contrary.
The apprehension of the pauper is stated indeed to have been to the con-
trary: but it is also stated that there was no agreement for that purpose.
His lordship said he did not see any circumstances to vary it from the ge-
neral

neral rule, which has been and must be agreed. The three other judges were of the same opinion. *Per cur.* Both orders quashed.

Settlement
gained by
conditional
hiring with a
year's service.
1 Bur. Sett.
Ca. 19, (Feb.
12, 1734) Rex
v. inhabitants
of New Wind-
for. 2 Sess.
Ca. No. 163,
S. C.

On *Saturday* the first of *February* 1734, Mr. *Proctor* moved to quash an order of sessions confirming an order of two justices, made for the removal of *Diana Brooks* from *Chepping Wycomb* to *New Windsor*; together with the original order. He made an objection to the order of the two justices, that the direction is to the churchwardens and overseers of the burrough of *Chepping Wycomb*, not naming any parish; and that the two justices, who made the order of removal, do not appear to be justices for the burrough or for the county. He also objected to both the orders, upon the merits. The case stated upon the order of sessions was—that in *August* 1731, she was hired to serve colonel *Meyrick* at *Thorpe* in the county of *Surry*, and was to go into his service a month upon liking, and was to have 5*l.* a year wages; but was to go away from her said service on a month's wages or a month's warning, to be at any time paid or given on either side by the said master or servant; and that she continued in her said service near the space of two years without any other hiring, and received her wages quarterly; and that at the time of her being hired to serve the said colonel *Meyrick*, the said parish of *New Windsor* was the place of her last legal settlement; and that she hath not since gained any other legal settlement elsewhere or otherwise than by the said hiring and service to the said colonel *Meyrick* as aforesaid. Upon shewing cause (on the last day of the same term) against quashing the orders, it was argued by Mr. *Pilfworth*, in support of the orders, that she gained no settlement at *Thorpe*; because there was no hiring for a year; nor was she compellable to serve a year. Even a hiring for a year with liberty to go away upon forfeiting a month's wages, would not have been within 3 *£* 4 *W. & M.* for the servant ought to be compellable to remain a year. The mention of 5*l.* *per annum* cannot amount to a hiring for a year: it is only to ascertain the proportion of a month's wages after that rate. And the contrary intention appears from the receiving her wages quarterly, and not yearly. As to the objections to the form of the original orders—They come too late, since 5 *G.* 2, c. 19, 21, which impowers the sessions to amend and rectify them. Therefore having omitted to make their objections before the court of sessions, they have waved them. The first of these objections is, that the direction is to the churchwardens, &c. of the burrough, without naming a parish. But if a vill in a parish have particular officers, it is sufficient: and they shall be considered as distinct parishes in respect of their poor. And the burrough of *Chepping Wycomb* is a distinct vill. And they have actually submitted and removed the parties. The second objection is, that it does not appear that the justices are justices of the burrough or of the county. But “burrough of *Chepping Wycomb*” is in the margin. The intent of the words in the margin of an order are to denote the extent of the jurisdiction of the persons making it; (as *England* is a lord chief-justice's warrant :) and they relate to every part of it. And it appears upon the order of the sessions, that these two justices are justices
of

of and for the said burrough. So that the sessions, who have power to rectify any omissions in point of form, have supplied this. On the contrary, it was argued by Serjeant *Wright* and Mr. *Proctor*, the counsel for *New Windsor*, that this is a hiring for a year, at *Thorpe*. 5*l.* A year's wages is tantamount to 5*l.* wages for a year. And she was compellable to serve for a year, unless by further agreement the former contract should be dispensed with. This is a point of great consequence: for this is the constant way and method of hiring among gentlemen. In the case between the parishes of *Lidney* and *Stroude* in *Gloucestershire*, a hiring for a quarter of a year, and if she and her master liked each other, she was to continue a year and have 3*l.* for her year's wages. She did continue a year, and received the 3*l.* wages. This was held a good settlement, on her having continued a year. Yet that was not a direct and explicit hiring for a year. Though, in this present case, the pauper received her wages quarterly; it was no part of the agreement that she should do so. Therefore that cannot vary the original contract. The objections to the order of these two justices are not answered: There is no such thing as churchwardens and overseers of a burrough: they are parochial offices. And a parish is an ecclesiastical district; a burrough a civil district. As to the justices appearing to be justices for the burrough or county—2 *Salk.* 474, *Rex v. Dobbyn*, proves it to be necessary that this should appear. And in the case of *Rex v. the inhabitants of Oulton* in *Cumberland*, *P.* 13 *G.* 1, *B. R.* the court held that the justices must shew their jurisdiction. And the order of sessions can't supply this defect. As to the late act, of 5 *G.* 2, *c.* 19,—though the sessions had jurisdiction to amend; yet since they have not done it, the objection is open. The jurisdiction of this court remains, since the act does not take it away. Though the words burrough of *Chepping Wycomb*, be in the margin; there are no words of reference: therefore the order of sessions cannot help it; for, that is only recital. Lord *Hardwicke*.—The question upon the merits of this case, is, whether the fact, as stated, be evidence of a hiring for a year. For, if it be, we must adjudge upon the same evidence. I think it is: or else you would overturn most of the settlements in *England*, upon hirings in gentlemen's services. I believe the ordinary way of hiring is at so much a year, and a month's wages, or a month's warning on either side. I think it is reasonable that the having 5*l.* a year wages should be understood as meant to fix for how long a time the service was to be, unless sooner determined. And I do not think the limitation of its being to cease upon a month's wages or warning on either side, will have any effect: for that is the common method. And it is expressly stated that she continued in her said service near two years: her coming upon liking for a month, does not alter the case, at all. As to the limitations of a month's wages or a month's warning—the case of *Lidney v. Stroude* is a strong case: for that service might have been determined at any time. Therefore I think the justices might have stated this to be a hiring for a year. I do not think we can take the sessions to have amended the order of the two justices, only because they had power to amend it. But I think it is a settlement

at *Thorpe*: and therefore the sessions should have discharged the first order. Mr. *J. Page*. I am of the same opinion.—I think the having 5*l.* a year wages shews that it was a hiring for a year. It is defeazible indeed: but so is an absolute and exprefs hiring for a year, wherever there is a power to determine it sooner. The other objections against the original order are out of the case, because the merits are plain: and upon them it ought to have been discharged by the sessions. Mr. *J. Probyn*. The natural construction is, that it is a hiring for a year at 5*l.* wages: and it is tantamount to saying that she was hired for a year at 5*l.* a year wages. The rest is matter which is to go in defeazance of the contract. But notwithstanding those eventual limitations, the service actually subsists for near two years: though they might have avoided the contract, they have not. Mr. *J. Lee* was of the same opinion, that upon the face of this special order, it appears that she was legally settled at *Thorpe*. For it is stated that she was hired to colonel *Meyrick* at *Thorpe*. Now a general hiring is a hiring for a year. Then it is stated that she was to have 5*l.* a year wages. The contract depends upon the first hiring. The parties had it indeed in their power to avoid the contract: but they have not done so. The reason of making a hiring for a year requisite, is the credit of the person thought worthy to serve for a year. And here it is as strong: for after the trial, the master lets the service go on for near two years. Therefore the words and intention of the act are complied with in this case. *Per cur.* unanimously. Both orders quashed.

Settlement gained by hiring of a married man, and service for a year; but the agreement was not completed till after his wife's death. 2 Bur. Sett. Ca 455, East. 31 Geo. 2, Rex v. inhabitants of Bank-New-
ton. Mr. *Aston* shewed cause against quashing the two following orders. Two justices removed *George Ayrton*, *Ellen* his wife, *Anne*, *Elizabeth*, *Isabel*, *Jane*, and *George* their children from the parish of *Marton* in the west-riding of *Yorkshire* to *Bank-Newton* in the said riding: and the sessions, upon an appeal, confirm their order. The state of the case was this—*George Ayrton*, the pauper, and his wife, being legally settled at *Bank-Newton*, on the 16th of *February* 1738, *John Wilcock*, a son of *Henry Wilcock* of *Marton*, by order of his father, on the said 16th of *February* 1738, agreed on the behalf of his said father, with the said *George Ayrton* the pauper, who was then a married man, to serve the said *Henry Wilcock* his father, for a year, from the 24th of the same month of *February* (when his father's then servant was to go away,) at five guineas wages; in case the said *Henry Wilcock* should approve the said terms. That afterwards, the wife of the said *George Ayrton* died, on the 18th of the same month of *February* without issue. And on the 24th of the same month of *February*, the said *George Ayrton*, then having neither wife nor child, went to the said *Henry Wilcock* the father, who then lived in *Marton* aforesaid. And the said *H. W.* then asked him the said *G. A.* upon what terms and conditions, he the said *G. A.* and his son *John Wilcock* had agreed: and the said *G. A.* then told the said *H. W.* that the terms agreed upon between him the said *G. A.* and the said *J. W.* were, that he the said *G. A.* should serve the said *H. W.* for a year, from the 24th day of the same month of *February*, for 5*l.* 5*s.* wages, in case he the said *H. W.* should approve the said terms.

And

And thereupon the said *H. W.* said that he did agree to the same terms. And accordingly, the pauper *G. A.* did, on the said 24th of *February* 1738, then having neither wife nor child, enter into the service of the said *H. W.* and did serve the said *H. W.* in *Marton* aforesaid for one whole year from the said 24th day of *February* 1738; and received 5*l.* 5*s.* of the said *H. W.* for a year's wages. The sessions were of opinion, that the pauper served the said year, under the said contract made with the said *John Wilcock*, as aforesaid; and that at the time of the said contract and hiring, he was not an unmarried person without a wife; and that therefore he did not, by such hiring and service, gain a settlement in *Marton*: and therefore they confirm the said order of removal. Mr. *Norton* having moved, on *Wednesday* the 8th of *February* 1758, to quash both the original order and the order of sessions—Mr. *Aston* now shewed cause why these orders should not be quashed. By 3 & 4 *W. & M. c.* 11, sect. 7, he must be unmarried at the time of the hiring. The words are, "that if any unmarried person, not having child or children, shall be lawfully hired into any parish or town for one year, such service shall be adjudged and deemed a good settlement therein; though no such notice in writing be delivered and published, as is therein before required. Here, the hiring, he said, was on the 16th and the wife did not die till the 18th. So that he was not an unmarried person, when he was hired. The agreement might perhaps be made with a married person on purpose, by way of caution, to prevent a charge upon the parish. And in 10 *Mod.* 393, *Ranton v. Horton* parish—per *Pratt* ch. just. the intent of such a caution is lawful. [See *Lucas* 393.] To prove that the time of the contract, must be referred to the inception of it, he cited *Bro. contract*, pl. 15. The retainer is the proper inchoation of the service. So is *Bro. Labourers*, pl. 9 & 11. Mr. *Norton*, contra—for quashing the orders—The intent of the restriction of this law to unmarried persons without children, was to prevent the consequential damage that might accrue to parishes from hiring servants incumbered with wives or with unsettled children. But this man is within both the words and meaning of the qualifications admitted by the act. He could bring no consequential charge upon the parish. If a person hired unmarried, shall marry* during the service, yet he shall gain a settlement, both to himself and his wife. So if a female servant happening to be then with child, be hired; she and her child shall both gain a settlement, if she serves out her year. It is enough, that when he begun his service, there was no danger of a consequential charge to the parish. And this is all that the court have their eye upon. And though this should, as between the parties, be a contract between them, from the 16th, yet that will not affect the parish. But, however, the contract was not complete, but a meer nullity till the assent of the principal, (the father:) for he had it in his power to disapprove. It was not binding, till his assent was given; for the agent only acted under a limited authority. And when the principal did assent, the servant was unmarried. As to *Bro. Contract*, 15, it certainly was binding upon both the parties, when *J. N.* set the price: but had not been so, if *J. N.* had refused to set a price.

* See Salk. 529, and Sessions Cases, vol. 1, Eldley Lovat v. Client

price. So *Bro. Labourers*, pl. 9 & pl. 11. But still this affects only the contracting parties; and not the parish. Lord *Mansfield* stopt Mr. *Norton* from proceeding; it being clear that the hiring was on the 24th. For the father might have dissented from the conditional agreement made by his son on the 16th. But the man was unmarried on the 24th when the father made the complete agreement with him. And the three other judges declaring themselves most clearly to be of the same opinion—both orders were quashed.

Settlement
gained by hir-
ing and ser-
vice, tho' the
servant was
absent, with-
out the mas-
ter's leave, for
3 weeks in
the middle of
the year: but
the master re-
ceived him a-
gain. 1 Bur.
Sett. Ca. 47,
Trin. 8 & 9
Geo. 2, Rex
v. inhabitants
of Eaton.

Two justices removed *William Dracket* and *Ann* his wife from *North Wheatley* in *Nottinghamshire* to *Eaton* in the same county: and upon appeal to the sessions, they confirmed the order of the two justices. The case was specially stated in the order of sessions thus: that about seven years ago; the said *William Drackett*, was hired as a servant, to one *William Cocking* a settled inhabitant in *Eaton*, for a year, from *Martinmas* to *Martinmas*; and that, about the middle of the term, he absented himself from his master's service, without his consent, for about three weeks together; and then, upon the demand of his said master, he returned, and served out the remainder of the year with his said master at *Eaton*. The sessions being of opinion that this service gained a settlement, therefore confirmed the original order. The counsel who moved to quash these orders (Mr. *Makepeace*) objected that this was not a service for a year, pursuant to the statute of 8 & 9 W. 3, c. 30, sect. 4, which makes a continuance and abiding in the same service during the space of one whole year, to be as necessary as a hiring for a year. For, it is stated in the order of sessions, that he absented himself for about three weeks of that time without the consent of his master: and he did this without serving so much time beyond the expiration of the year as to make the whole time up a complete year. He could not therefore under such a service gain a settlement: and, consequently, the orders are bad and ought to be quashed. In support of the orders, it was answered (by Mr. *Abney*) that this exception was over-ruled in the case of the king against the inhabitants of *Islip*, P. 7 G. 1, where one *Wilson* (whose settlement was then in dispute) absented himself from his service four days, without his master's consent; afterwards, he went to see his friends for three days more (but that was with the consent of his master;) and about three days before the end of the year, he went away to seek a new service; all which amounted to ten days absence. And when he and his master came to settle accounts, the master deducted out of his wages a proportionable sum of money to the ten day's absence; which was a circumstance that made that case much stronger than this: and yet the court held the service in that case to be a service within the meaning of 8 & 9 W. 3. And that the party thereby gained a legal settlement in *Islip*. [See this case very well reported in Sir *John Strange's Reports*, vol. 1, pa. 423.] *Per cur.*—This is a very good order; the absence of the servant for the three weeks being purged by the master's receiving him again: which ought to be considered in this case as a dispensation: and in strictness of law, he still continued in the service of the master,

master, notwithstanding such absence. And besides, if we were to be over-nice in services upon this statute, it would be attended with very great inconvenience: for, a servant would not be able to go for two or three days to see his friends without running the risque of forfeiting his settlement; which would be too hard. The orders were therefore affirmed.

Two justices made an order for the removal of *William Markbam* the elder and *Catharine* his wife, and their six young children, to wit *Hannah*, *Anne*, *Catharine*, *William*, and *Thomas*, aged about seven, six, five, four, one and a half years respectively and one other daughter aged about five weeks, not then baptized, from *St. Peter's the Apostle* in *Sandwich* to *Goodnestone* next *Wingham* (both in *Kent*;) and, upon appeal, the sessions confirmed that order. Special case—*William Markbam*, being settled in *Goodnestone*, unmarried, and without child or children, was hired by *John Wyborne* of *Northbourne* to serve him from *Michaelmas* 1731 for a year, at 8*l.* a year; and lived with and served his said master in *Northbourne* till within three weeks of *Michaelmas*-day following; when he asked his master to give him leave to go to the herring fishery; and his master consented that he should go if he could get a man to do his work to his (the master's) liking. *William Markbam* accordingly procured one *German* to do his work, and agreed to give him 5*s.* a week for the same, and paid him the said sum; and brought the said *German* to his said master, and his master approved of him; and *German* did *Wyborne's* work in the said parish of *Northbourne* to the end of the year. *Markbam* went to sea, and returned at the end of the herring fishery; which was about three weeks after *Michaelmas*; and what he earned at the said fishery was for his own benefit. When he went to sea, his master paid him, on his request, 3*l.* part of his wages; but paid him no more at that time, because the said *Markbam* said he then had no occasion for more money: and when he returned, his said master paid him 5*l.* the residue of the wages left in his hands. And then *Markbam* made a new agreement to serve the said *Wyborne*; and served him about three quarters of a year more, under the second contract. And they state that *William Markbam* gained no other settlement in *Northbourne*, save as aforesaid, nor hath since gained any settlement in any other parish. On the 9th of *February* last, a motion was made to quash these orders: for that the settlement of *William Markbam* appeared to be in *Northbourne*; since this service for three weeks was equivalent to a personal service, upon the maxim *Qui facit per alium facit per se*. To prove which, the following cases were cited—*Littleton*, sect. 157. 11 *H.* 4, 72. *b.* 24 *Edw.* 3, 32, *a.* *Co. Lit.* 107. It came on again, on *Wednesday* 22d *May* 1745; but was then adjourned. It now came on again, and was argued by *Mr. Thomas Robinson* and *Mr. Knowler*. *Mr. Robinson*, who was for the motion to quash the orders, stated the before-mentioned cases, and added two more, viz. *P.* 7 *G.* 1, *Rex v. inhabitants of Iffip*, and *P.* 17 *G.* 2, *Rex v. inhabitants of Beccles*. *Mr. Knowler*, who shewed cause against quashing these orders, said, the question turned upon the service not * continuing to the end of the year: * See 8 & 9 the master and servant parted by consent; and by this, the contract was dissolved. W. 3. c. 30, sect. 4.

dissolved. In the *Islip* case, the servant only went to a statute-fair, and the contract was not dissolved. In the case of *Rex. v. the inhabitants of Beccles*, p. 1744, 17 G. 2, B. R. the servant worked with another by the consent of his master : but here was a parting by consent ; and it was known that the fishery would last till after *Michaelmas*. Lord Chief-justice *Lee*—Here is a hiring for a year stated : the question is, whether there is a service for a year, too. Now I cannot distinguish this case from that of *Beccles*. In which case, the absence with the master's consent were holden not to vitiate or dissolve the contract. So in the case of *Islip*—It's plain the court did not hold it to a scrupulous exactness, when there was a hiring for a year ; though there were, in that case, many instances of absence—Two were sickness : and the last was, by a liberal construction, looked upon as a just cause of going away ; and therefore not a dissolution of the contract. In the present case, no dissolution of the contract is stated : and the master paid him his wages for the whole year. Here was leave given by the master, three weeks before *Michaelmas*, to be absent during the herring fishery : and in the mean time he provided one to do his business, and received his whole year's wages. I am of opinion that both orders must be quashed. The three other judges concurred in the same opinion, for the same reasons. And Mr. justice *Wright* and Mr. justice *Denison* thought this even a stronger case than that of *Beccles*. Mr. justice *Foster* added, That as the master had the benefit of the contract during the whole year, so ought the servant to have it also. Per cur. unanimously—Rule made absolute to quash both orders.

Settlement
gained by hi-
ring for a
year, and ser-
vice till within
5 weeks of
the end of
the year ;
and then
absent with
leave. 2 Bur.
Sett. Ca. 479.
East. 32 Geo.
2, Rex v. in-
habitants of
Nether Hey-
ford.

Two justices removed *John Gare* and *Hannah* his wife, from *Kislingbury* to *Nether Heyford* (both in *Northamptonshire* :) and the sessions confirmed their order. It appeared upon the special state of the case, that the pauper's last service for a year, under a regular hiring for a year, was at a farm-house called *Dirt-house* ; which the pauper sometimes said was in the parish of *Nether Heyford*, and at other times, that it was in another parish (named in the order of sessions.) But they state that it lay in one or the other of the said two parishes. This order was, by consent, agreed to be too uncertain for the court to judge upon : and it was ordered, by consent, that the matter should go back to the sessions, for them to state, which parish the said *Dirt-house* stands in. On *Thursday* the 10th *May* 1759, Sir *Richard Lloyd* moved to file the new order of sessions, made and returned pursuant to the last rule, which was to enlarge the former rule for shewing cause why the original order made for the removal of *John Gare* and *Hannah* his wife from *Kislingbury* in the county of *Northampton* to *Nether Heyford* in the same county, should not be quashed ; and also further ordered, that in the mean time it be referred back to the justices of the peace in and for the said county, to settle the fact particularly, and to state particularly in what parish the *Dirt-house* (mentioned in the said order of sessions) lies ; and afterwards to return the same to this court. Which motion was granted ; and this order of return ordered to be filed. It was as follows, *viz.* In pursuance of and obedience to the rule hereunto annexed, This court [the sessions] doth hereby certify that upon hearing of the ap-
peal

peal concerning the settlement of *John Gare* and *Hannah* his wife, at *Epiphany* sessions, 31 G. 2. the fact then appeared to be, that the said *John Gare* was born in *Farthingstone* in the county of *Northampton*. That before *Michaelmas* 1754, he was hired for one year as a servant to *Edward Judkins*, who then lived in a house called the *Dirt-house* adjoining to a high road leading from *Towcester* to *Daventry*: which year's service the said *John Gare* performed at the said *Dirt-house*. That it did not then appear whether the said *Dirt-house* was in the parish of *Stow Nine Churches*, or *Nether Heyford* in the county aforesaid. That he the said *Gare* before *Michaelmas* 1756, was hired for one year to widow *Bliss* of *Farthingstone* aforesaid; and continued in her service until five weeks before *Michaelmas* 1757: when with his mistress's leave, he parted with her and went to work with one *Litchfield* a farmer at *Kislingbury* in the county aforesaid, and stayed with him the said five weeks, at *Kislingbury*. That after *Michaelmas* 1757, the said *Gare* went to his said mistress *Bliss* for his year's wages: the whole whereof she laid down to him, and he thereout voluntarily deducted ten shillings for his five weeks absence; being the same sum he had earned and received for his five weeks at *Kislingbury*. That the original contract, nor any new one, with his mistress *Bliss* was dissolved or made, save as aforesaid. And that if his said mistress had, during the said five weeks, required him to return to her, he should have so done. Therefore this court [the sessions] upon hearing the said appeal, for the reasons aforesaid, did confirm the original order of removal. And in further pursuance of and obedience to the said rule, this court [the sessions] doth hereby further certify, that at this present sessions, it fully appeared to the justices of the peace in the said rule mentioned, who were then present, on the examination of witnesses, that the said *Dirt-house* lies and is in the parish of *Nether Heyford* aforesaid, and not in any other parish or place. Mr. *Caldecott*, who moved to quash these orders, owning that it was now clear that the *Dirt house* stood in *Nether Heyford*, urged that the pauper had gained a settlement by his service with the widow *Bliss* at *Farthingstone*: and he cited 1 *Strange* 423, *Rex v. inhabitants of Islip*. 2 *Strange* 1232, *St. Peter in Sandwich v. Goodnestone*. Sir *Richard Lloyd contra*, insisted that the pauper's contract with the widow *Bliss* was totally and absolutely dissolved, by his parting from her service five weeks within the year *Curia advisare vult*. Lord *Mansfield* now delivered the resolution of the court. The question turns singly upon this, Whether his absence for five weeks was a dissolution of the contract. If he had his mistress's leave, it was not: if he had it not, it was. And we are all of opinion, that it was only an absence with leave. For it appears that both parties considered the contract between them, as subsisting and not dissolved. He paid her the whole that he had earned in the five weeks that he was absent; that is, he voluntarily deducted it from the wages she laid down to him; considering himself as her servant during that time: for otherwise, the deduction would not have been a deduction of the particular sum earned by him; but a deduction in proportion of his whole year's wages to the time of his absence. And he looked upon himself as liable to be called back within the five weeks. Therefore it was

only a leave to be absent for the whole time, or for part of the time, as she should call him back sooner or later. And as she did not call him back sooner, it was a leave for the whole five weeks. It is stated that the man was willing to have returned within the five weeks, and would have so done, if his mistress had required him to do it. And the sum deducted was not proportioned to the time of his absence: which would have been the measure of deduction if the contract had been considered by them as totally dissolved and at an end, when he went away from her. But the paying her the exact sum that he earned, shews that these five weeks service was treated by them as a part of the service done to her. And it is stated, that the original contract was not dissolved, save as aforesaid. Therefore, upon the whole circumstances specially stated, we are all of opinion, that the contract was not dissolved. Consequently, the rule must be made absolute, and the orders quashed. Both orders quashed.

Settlement
gained by
hiring for a
year, and ser-
vice till within
17 days of the
end of the
year; and
then leaving it,
being visited
with illness,
and never re-
turning: the
relation of
master and ser-
vant continu-
ed, and it is
not put an end
to by this vi-
sitation of
God. 2 Bur.
Sett. Ca. 494.
East. 33 Geo.
2, Rex v. in-
habitants of
Christchurch.

Two justices made an order for the removal of *Elizabeth Maxey* spinster, from *Christchurch* to *St. Matthew's Bethnall Green*, (both in the county of *Middlesex*;) and the sessions, upon an appeal, discharged the said order; stating the case specially. The special case stated—On the 24th of *August* 1757, the said *Elizabeth Maxey* was hired into the service of *Robert Gilman* of *Christchurch*, for a year; and continued in such service there, from that day till the 7th of *August* then next following; when she was frightened into fits, and thereby rendered incapable of doing any service. That her master being taken very ill, and being disturbed by the said *Elizabeth Maxey's* fits, her mistress desired the sister of the said *Elizabeth Maxey* to go with the said *Elizabeth Maxey* to one *Mr. Lemonier's* in the said parish of *St. Matthew Bethnall Green* (where the said *Elizabeth Maxey's* said sister then lived as a servant,) and to request *Mrs. Lemonier* to receive her into their house, that she might be there under the care of her sister: but if the said *Mr. Lemonier* refused to admit her, she was then to bring the said *Elizabeth Maxey* back to her said master's house again. That *Mr. Lemonier* accordingly received her; and she resided there about five days; and then she was taken into the hospital. That the day after the said *Elizabeth Maxey* had been received into *Mr. Lemonier's* house, she returned to her said master's house, to fetch away her cloaths: and her mistress gave her two shillings; which, with what she had before received, made up the full year's wages. That no words of discharge passed between the said pauper and her mistress: but the said *Elizabeth Maxey* looked upon herself as then discharged from her said service; but believed that had she recovered her health, her master would have received her again into his service. That she continued under the same indisposition, till after the year from the said time of hiring was expired; and never returned again into her said master's service. And that on the 17th of *August* 1758, her master hired another servant in her place. And it is admitted, on behalf of the appellants, that the said *Elizabeth Maxey* was legally settled in the said parish of *St. Matthew Bethnall Green*: unless a subsequent one was gained by her in the said parish of *Christchurch*, under the abovementioned circumstances. The sessions,
upon.

upon consideration of the premisses, allowed of the appeal, and vacated the order of the two justices: and they further ordered the pauper to be removed from *St. Matthew's Bethnall Green* to *Christchurch*, and require the parish of *Christchurch* to receive and provide for her, until they can free themselves from the charge thereof by due course of law. On *Tuesday* 12th *February* 1760, Mr. *Norton* moved to quash this order of sessions, and to affirm the original order: and obtained a rule to shew cause. Mr. *Norton's* objection to this order of sessions was, That this service in *Christchurch* was not sufficient to gain a settlement; being seventeen days short of the year for which she had been hired. Mr. *Aston* and Mr. *Storve* now shewed cause; and argued this to be a good service, within 8 *£* 9 *W.* 3, c. 30, *sect.* 4. This was either an inability by sickness, or an absence with leave of her master. In either case it is a good settlement. In 1 *Strange* 423, 424, *Rex v. inhabitants of Islip*, sickness during six days in the middle of the year, was no objection to the service; nor absence three days, at the end of the service, upon a reasonable cause; nor an absence of four days, without leave, in the middle of the year. So, in the case of * *Rex v. 2 Strange* inhabitants of *Goodneston, Tr.* 19 G. 2, B. R.—Leave to go to the Herring-¹²³² Fishery, though the servant was absent about three weeks at the end of the year, and did not return till three weeks after the expiration of it, was held a good settlement. In the case of *Rex v. Beccles*, (cited in 2 *Strange* 1207,) absence, by his master's leave to work for other persons three weeks and three days in all) was holden not to prevent the gaining a settlement. And here are no words of discharge: nor any consent of the master to her being discharged. Besides, the master was bound to provide for and take care of her, while she was sick: and therefore it must be taken that she continued in the service. The failure arose only from the act of God. Mr. *Norton*, Mr. *Morton*, and Mr. *Lane*, contra—argued that this service was insufficient to gain her a settlement in *Christchurch*: for she did not continue and abide in the service, one whole year, as the act of parliament expressly requires. In the *Islip* case, the servant's absence (to visit his mother) and his sickness too, were in the middle of the year: and the absence was purged, by the master's receiving him again. And the three days absence at the end of the year, (to go to the statute-fair) was holden to have been unreasonably opposed and denied by the master, and with a fraudulent declaration that the servant should gain no settlement with him. In the *Goodneston* case, where the servant went to the herring-fishery—It was holden that the servant was to be considered as all the while in the service of the master; it being by leave, and another person hired by the servant to do the business: and the servant returned again to his master after the expiration of the year, and received from him his whole year's wages. But here, the absence was 17 days at the end of the year; and she looked upon herself as discharged; and the master hired another servant in her place. If this be allowed at the end of the year, where can the court stop? it may as well be a want of 3 weeks, or a month, or 2 months. In 2 *Strange* 1022, *Seaford v. Castlechurch*, going away (without
3 Z 2 leave)

leave) 12 days before the end of the year, prevented a settlement; though the master paid him the whole year's wages. The master's generosity, in paying the whole wages, makes no difference in the case. To gain a settlement, there must be a complete hiring for a year, and service for a year: so it was determined in 1 *Strange* 143, *Coombe v. Westwoodbay*; where a week being wanting at the beginning of the year, it was holden to be no settlement. The acquiring a settlement in a parish, by service, is no benefit to the servant: for a servant has no more benefit (in general) by having a settlement in one parish, than in another. Lord *Mansfield*—— This case is an additional proof, amongst many others, upon how inconvenient a foot the law of settlements stands. This must appear a very clear case to any person of common plain sense and understanding. It is certainly a fair *bonâ fide* service for a year, without any fraud on either side, either of the master or of the servant. If a master gives his servant leave to go upon any other service, or to be absent for a short time, and pays him his whole wages, this is a fair *bonâ fide* service. If the servant is taken ill, by the visitation of God, it is a condition incident to humanity, and is implied in all contracts. Therefore the master is bound to provide for and take care of the servant so taken ill in his service; and can not deduct wages in proportion to the continuance of the servant's sickness. Here, the master requested Mrs. *Lemonier* to take in his servant; the master himself being, at the same time, sick at home. Then she was afterwards sent to the hospital by her master's consent. And the master and mistress paid her her whole wages, and were satisfied with what was done. Can any one doubt of this being a service, *bonâ fide*, for a year? being sent to an hospital by a kind master ought not to hurt the settlement of a servant visited by sickness. And I see no difference between such an accident of sickness happening in the middle, or happening at the end of the year: it is equally the act of God, and without any fault of the servant. Mr. Justice *Denison* said he thought this the weakest ground of objection to a settlement that he had ever met with. He concurred with his lordship, that the illness of the servant happening at one part of the year, or at another, (being always the act of God,) could make no sort of difference. And he was extremely clear that this act of God ought not to prevent the servant from gaining a settlement. And if, by the consent of the master, she be sent to an hospital; shall that alter the case, and make it different from her being kept at home in the master's own house? surely, not. She certainly does continue and abide in the service of her master. For, continuing and abiding in the service means not deserting it: and she can not be considered as having deserted her service. There was no need of any cases being cited upon this occasion: that of *Islip* comes nearest to the present case. Mr. Justice *Foster* concurred with his Lordship and Mr. Justice *Denison*. He said that the relation between the master and servant certainly continues: it is not put an end to, by this visitation of God. And he observed that the sending her out of the master's house to Mr. *Lemonier's*, and afterwards to the hospital, was for the ease of the master, and for his own convenience. Mr. Justice *Wilmot* said it was the clearest case that could

could be. The distinction between the servant's absence in the middle and at the end of the year, turns upon the absence in the middle of the year being purged by the master's receiving the servant again; which is not the case of an absence at the end of his year, when he does not return. But with regard to the act of God, illness; it is just the same thing, whether that happens at the beginning, middle or end of the year: the time makes no difference, in the reason of the thing. And in the present case, the servant's being at Mr. *Lemonier's*, or in the hospital, is just the same thing as her being kept in the master's house, under his own roof. I do not agree to the position, That the servant has no benefit by gaining a settlement in a parish. It is not indifferent to a servant (very often) in what parish he gains a settlement: it is, in many cases, an advantage, in fact; and has always been, and ought to be looked upon as such. It is a reward for their labour and service: and in that light, it is but reasonable to consider it. Mr. Justice *Foster* agreed with Mr. Justice *Wilmot*, in this. Is it indifferent to a foreigner who has no settlement of his own? it is certainly a benefit to such a person: for he obtains a settlement by the hiring and service, instead of being (as he was before) without any settlement at all. Per cur. unanimously.—Order of sessions confirmed. Order of two justices quashed.

A rule was made on *Tuesday* next after the morrow of *All Souls* 11 G. 2, Settlement on the motion of Mr. *Bennett*, to shew cause why the original order made gained by for removing *William Trim*, *Ann* his wife, *William*, *Robert* and *Thomas* their hiring for children, from *West Stower* to *Fifehead Magdalen* (both in *Dorsetshire*.) and three-quarters of a year, and also the order of sessions made in confirmation of it, should not be quashed; serving it; The case stated upon the order of sessions was this—*William Trim* then leaving the father was born in *West Stower*, and afterwards hired himself for a year the service for with one *R. P.* of *Fifehead Magdalen*: with whom he lived, in pursuance of such hiring, for one year, and received his wages. The said pauper one hour; re- afterwards went into the said parish of *West Stower*, and hired himself to hiring for a 'one *R. H.* of *West Stower*, from *Midsummer* to *Lady-day* following, at 40s. but serving only half a year. This for that three quarters of a year: and at the said *Lady-day*, he received his was no discon- said wages of 40s. and left his master's service; and then went to his fa- tinuance. 1 ther's house in *West Stower* aforesaid, before he and his said master had any Bur. Sett. Ca. discourse about continuing in his service or making any new contract. After 116. Mich. he had been with his father about one hour, his father advised him to go 11 Geo. 2. to his master, and see if he could not agree with him for a year. He ac- Rex v. inha- cordingly went up thereupon, and met his master, and agreed with him bitants of for a year, at 3l. 10s a year; and lived with his master but half a year, Fifehead *viz.* to *Michaelmas* following, in pursuance of such second agreement; Magdalen. when his master turned him away, and paid him only half a year's wages, which he accepted of, and quitted his master's service. When he went from his said master's house as aforesaid, he had no clothes but what he wore, except a shirt, which he left at his said master's house in *West Stower* aforesaid. The objection made to these orders by Mr. *Bennet*, supported by Serjeant *Huffey*, was, that *William Trim*, the father, gained a good settlement

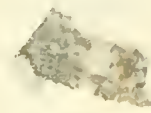
Poor. (Settlement by Hiring and Service.)

tlement in *West Stower*, by being hired for three quarters of a year and serving it, and then serving half a year, in pursuance of a hiring for a whole year. For, that here was, upon the whole taken together, both a hiring for a year, and a service for a year; which is all that the statute of 3 & 4 W. & M. c. 11, sect. 7, even after its explanation by 8 & 9 W. 3, c. 30, sect. 4, requires: and it has been determined not to be necessary, that both should be upon the same contract. In proof whereof, they cited the cases of *Brightwell* and *West Hanning*, Hil. 1 G. 1, (which is printed in *Lucas's Reports* 10 Mod. 287.) and the king against the inhabitants of *Aynhoe*, M. 1 G. 2, (which is in *Fitz-Gibbon* 3, and 2 Lord Raymond 1511.) The answer given to this objection, by Mr. Gundry and Mr. Brodrep (who were of counsel for the orders) was, that the former of these acts requires a hiring for a year; and the latter, the 8 & 9 W. 3, c. 30, sect. 4, expressly requires that the person shall continue and abide in the same service during the space of one whole year. Whereas the first hiring, in the present case, was only for three quarters of a year; and that contract was discontinued and at an end, before the second contract was entered upon: so that it was not a continuing in the same service. He left his service, was his own master, and might have hired himself to another. Nor were these two services both under the same contract. For, the first contract was for forty shillings for the three quarters of a year: the second was for 3*l.* 10*s.* for the whole year; which is a quite different contract. *Lee* Lord Chief Justice.—I remember, the resolution that a hiring for a year and a service for a year were sufficient to gain a settlement, if there were in fact both; though all the service should not be under the same contract, was first come into in Lord *Macclesfield's* time: and Sir *Thomas Pears* (who was just come into the court) boggled very much at it. But it is now established that a hiring for a year and a service for a year will gain a settlement, though all the service be not in pursuance of the first hiring for a year. The reason given by Lord *Macclesfield* for this resolution was, That the words of the acts of parliament were complied with, by there being both a hiring for a year and also a service for the space of a whole year, although the whole service for a year was not performed under the hiring for a year: and the intention of the acts was to prevent persons of no credit from intruding into parishes. The hiring for a year was thought necessary, to shew that the person had credit enough to be hired for a year by any paritioner who had so much confidence in him. And another consideration was the benefit received by the parish from the person's labour for a whole year. These were the reasons of the resolution: and this resolution has been adhered to ever since. The only difference between the cases adjudged and the present case, is, that in the case now before us it is stated, that after the servant had received his wages for the three quarters of a year, and left his master's service, he went to his father's, was absent about an hour, and then came back to his master and entered into the fresh agreement for a year. Now I see no reason why this should be looked upon as a discontinuance of the service. The servant was a little doubtful about a new contract: he goes to consult his father, and in

an hour's time returns and makes a new contract, and serves as long under it as to make up (in the whole) a complete service for a year. The sameness of the contract has not been so strictly insisted upon, as to make it absolutely necessary that it should be under the very same bargain. I remember a case (which I argued myself) between the inhabitants of *Ivinghoe* and *Solebury**, where a shepherd was hired for a year into *Ivinghoe*, by a farmer who quitted the farm to another person before the year was out, and the servant served out his year with that other person; and was holden to be settled in *Ivinghoe*; it being a continuance in the same service, under the same hiring, in the same farm, and under the same contract which had never been dissolved. Mr. Justice *Page* concurred in the same opinion; and did not look upon this absence for an hour, under the circumstance of going to consult his father, to be a discontinuance of the service sufficient to prevent a settlement. Mr. Justice *Probyn*—This matter was first settled in Lord *Macclesfield's* time, as my lord chief-justice has mentioned: there was much doubt about it at first. The reason of the resolution was, that these acts were restrictive of the liberty of the subject, and therefore ought to receive a liberal construction. They require a hiring for a year, and a service for a year: and both requisites were complied with. The present case was not an absolute determination of the service. It was not a total departure: he only went to his father for an hour, leaving part of his clothes at his master's house; and then agreed with him for a year, and lived on with him. So that the service actually continued. It is not stated to be a departure from the service, with the consent of his master. And it is the same service, though performed under two contracts. Mr. Justice *Chapple* also concurred in opinion that this short absence, under these circumstances, was no discontinuance of the service. He thought this determination to be agreeable to the former cases. Upon every new contract, there is a sort of a discontinuance. The last day of the former contract was the first day of the second service: and this was only an hour's absence within the space of that same day. Therefore he remained a servant during the whole time of the completion of his year. The court considered this special state of the case as containing the only and the whole question relating to the settlement of the whole family. And upon that foot, they over-ruled an argument that the original order ought to be confirmed as to the settlement of the children, because it had adjudged their settlement to be in *Fifehead Magdalen*, and the special matter stated by the sessions concerned only the father and his settlement, without taking any notice of the children: for, they said, they must take the settlement of the father to be the single point of doubt as to the settlement of all the family, as the sessions had stated nothing else. Both orders quashed.

Two justices made an order for the removal of *Anne Kellet* from *Underbarrow* and *Bradley-Field* in the county of *Westmorland* to *Croftbwaite* and *Lytbe* in the same county: and the sessions, upon an appeal, discharged that order. The order of sessions states the facts to be thus—Special case—*Anne* then a second

* Pasch 4 G. 1.
See Sir John
Strange's Re-
ports, pa. 90.
Rex v. inha-
bitants of
Ivinghoe.



hiring to the same master for a year, but not serving out the whole year; but being coupled to the former hiring, the total service amounted to above a year. 2 Bur. Sett. Ca. 545, Hil. 6 Geo. 3, (Jan. 27, 1766) Rex. v. inhabitants of Underbarrow and Bradley-Field.

—*Anne Kellet*, single woman, hired herself at *Whitsuntide* 1763, to *John Thompson* of *Croftbwaite* and *Lytbe*, to serve him till the *Whitsuntide* following 1764;) which method of hiring (from *Whitsuntide* to *Whitsuntide*) is the usual course of hiring servants by the year in that county of *Westmorland*. In pursuance of this hiring, she served him till *Martinmas* following (1763;) received her wages for that time; and quitted his service. At the *Christmas* following (1763,) she hired herself to the said *John Thompson*, to serve him at *Croftbwaite* and *Lytbe*, till *Whitsuntide* then next following (1764) at one pound wages; which she received. At the same *Whitsuntide*, she hired herself for one year to the said *John Thompson*, to serve him from that time till *Whitsuntide* 1765, at *Croftbwaite* and *Lytbe* aforesaid: and she continued in her said master's service at *Croftbwaite* and *Lytbe* aforesaid, under the said hirings, from the beginning of *January* 1764 till the beginning of *March* 1765; and then quitted her said service, and received wages in proportion to that time: being lame, and not able to serve him any longer. The sessions were of opinion that the said *Anne Kellet* gained no settlement thereby in the said township of *Croftbwaite* and *Lytbe*; and therefore quashed the order of the two justices, subject nevertheless to the opinion of this court. On *Thursday* 14th *November* last, Mr. *Stowe* moved, on behalf of the township of *Underbarrow* and *Bradley-Field*, to quash this order of sessions and affirm the original order. His objection was, that her settlement was at *Croftbwaite* and *Lytbe*: for that there was, upon the whole state of these facts, a hiring for a year, and a service for a year, when both were coupled together; though indeed the first hiring was for less than a year; and the second service was likewise for less than a year. Rule to shew cause. Mr. *Dunning* and Mr. *Wallace* now shewed cause why this order of sessions should not be quashed. Three several hirings are here stated; but the last only is for a year. For the first hiring is out of the case; as the service under it was totally discontinued; and the second hiring was but for about six months. But the subsequent continued service after the third hiring being taken all together, and coupled with the prior service under the second hiring, amounts to more than a year: and it has been settled that a subsequent service for less than a year performed under a hiring for a whole year, coupled with a prior service under a hiring for less than a year, shall gain a settlement; provided that there be (upon the whole) both a hiring for a year and also a service for a year. *Bridget Baily's* case, of *Overton* in *Hants*, *H. 10 W. 3*, was the first time the court coupled a prior service with a subsequent hiring, and held her to be settled in *Steventon*, because she served above a year in all. See *Cases of Settlements*, pa. 257, case 295. 3 *Salk.* pa. 257; and 12 *Mod* 224. (All S. C. and all of them * most egregiously erroneous.) The case of *South Moulton* in *Suffolk*, *Hil. 10 W. 3*, was a like determination. The maid was a covenant servant; first, for half a year, which she served; and then, for another year, and served half of that: it was holden to be a service for a year, within the new statute. See 1 Lord *Raym.* 426. Then in 12 *G. 1*, *B. R. Rex. v. inhabitants of Aynhoe* †—The court held that they were bound by the precedents: and determined, upon authority of the

* See the note at the end of the present case; where the true state of it is transcribed from the record.

† See lord *Raym.* 1511,

the precedents *, that such a hiring and such a service made a settlement. M. 1 G. 2, The pauper was hired, in *Bicester*, from *Christmas* to *Michaelmas*, and served till *Michaelmas*: then he was hired for a year, and served till *Midsummer*. This was holden to gain him a settlement in *Bicester*. But Dr. Burn† has, in his last edition, remarked that these two foundation-cases, viz. that of *Overton*, and that of *South Moulton*, were both of them antecedent in time to the statute of 8 & 9 W. 3, which, besides a hiring for a year, requires a continuance in the same service for a year ‡. *Bridget Baily's* service expired in *April* 1696; and the act was not made till after that time; for the sessions did not begin till 20th *October* 1696. So that both her hirings and the whole of her service were prior to the act of parliament of 8 & 9 W. 3, which did not take force, perhaps, till 1st *May* 1697. Before that act, a hiring, for a year, and forty days subsequent service, were sufficient to have gained a settlement. In the *South Moulton* case, the same thing will appear by computing the times §. Therefore the question is still open. In the case of *Rex v. inhabitants of Aynhoe*, Lord *Raymond* and also Mr. Justice *Page* declared that if it had been then *Res integra*, they should have adjudged it to be no settlement in *Bicester*. And it now appears to be so; as the two supposed precedents were in fact no precedents at all, being prior to the statute of 8 & 9 W. 3, therefore the service ought to be subsequent to the hiring for a year, and according to it: or else, it cannot gain a settlement. They acknowledged that the cases were against them: but what they strongly urged was, that those cases were founded on an error; and therefore the superstructure built upon them must of course fall to the ground. Lord *Mansfield*—The authority of these cases will be just the same, whether the facts were prior to the statute, or not: because the court determined them as upon facts subsequent to the statute **. Dr. *Burn* has great merit: he has done great service; and deserves great commendation; and his opinion is supported by the arguments and observations which he has urged in favour of it. But there are many determinations the other way: and upon the reason of the thing, the man's credit arising from his being hired for a year is as strong in the one case as in the other. Therefore the determinations are better founded upon reason, than the objection to them is. Besides, they are in favour of settlements: which is sufficient to turn the scale, if it hung quite even. For several reasons therefore we should not depart from these adjudged cases; but chiefly, from the inconvenience of altering and overturning settled determinations. It is best, *stare decisis*. The overturning settled determinations would be of very bad consequence: they ought not to be shaken. The practice was adhered to in the †† *Bewdley* case, though irreconcilable to a very recent act of parliament. The foundation cases had been right: for it is the ground of those determinations, not the facts of them, which were perhaps ‡‡ misapprehended, that gives them weight

Gibbon, pa. 3. (a) Dr. Burn cites this case from *Foley*, as being in pa. 144. ** See 1 lord Raym. 426. The question in the *South Moulton* case is expressly stated to be, whether it was a service for a year within the new statute. †† See *Peere Williams* 212, 219, 223, 224, *Regina v. Ballivos et Burgenfes de Bewdley*, †‡ But see my note at the end of this case: which shews that they were not misapprehended.

M. 1 G. 2, 1727, and Sessions Cases, edit. 1750, vol. 2, case 119, pa. 129; and *Foley*, pa. 155.
* Particularly that of *Brightwell* and *West Hallam*, Pasch. 1 G. 1, vide Sessions Cases, vol. 1, pa. 92, No. 87, *Foley*, pa. 154, and *Lucas* 287.
† See Dr. Burn's last edition, title, Poor Settlement by Service; vol. 3, pa. 308, and 317.
‡ Dr. Burn pre- sided at this present session, which made the order now in question.
§ Section 4. See this computation in Dr. Burn's tenth edition, in octavo, pa. 317.
|| See Dr. Burn's same tenth edition in octavo, vol. 3, pa. 315, 316, and in *Foley*, pa. 115 (a), (in the third edition); and in 2 lord Raym. 1511, and very imperfectly and incorrectly in *Fitz*.

as precedents for future determinations. Mr. Justice *Wilmot* spoke likewise with great regard of Dr. *Burn* (as indeed all the world does;) and he thought the doctor had reasoned very sensibly and ingeniously in support of his opinion: and he further added, that if it had been *res integra*, he might perhaps have thought so too; or, at least have doubted upon it. But, it is now settled; and the determination is in favour of settlements: and therefore it would be of ill consequence to vary from such a settled determination. He declared the maxim—*stare decisis*—to be, in his opinion, always proper; more especially here: and was therefore for establishing the original order, and discharging that made at sessions. Mr. Justice *Vates* spoke to the same effect.—Otherwise, he said, he should have held as Dr. *Burn* did: for by 8 & 9 *W. 3, c. 30*, it is required to be a continuance in the same service. Mr. Justice *Aston* concurred: and added that lord *Hardwicke* was likewise of the opinion *stare decisis*; and was very sensible of the inconvenience of departing from settled determinations. Upon the whole therefore, by the unanimous opinion of the court, grounded upon this principle of not overturning settled determinations; (and not upon a difference of sentiment from Dr. *Burn*, or disapprobation of his reasons;) they quashed this order of sessions, and affirmed that of the two justices. Order of sessions quashed. Original order affirmed. Note:—As Dr. *Burn* has taken great pains to come at the truth of facts, and is most accurate and judicious in his observations upon them, he has a right to the assistance of every one who can contribute towards the éclaircissement of his doubts. This seemed to be, in some measure, in my power upon the present occasion. I have therefore searched the files for the two orders, of *Overton* in *Hants*, and *South-Moulton* in *Suffolk*. The former is thus stated, upon the order of sessions: and that order bears date on the 4th of *October*, 10 *W. 3*, (which was 1698.) *Bridget Bayly*, before the 25th day of *March* 1697, was a settled inhabitant in the parish of *Overton*; and on or about the said 25th day of *March*, the said *Bridgett* contracted with one *John Orpwood* of *Steventon* aforesaid, for the wages of twenty shillings, to serve him from the said 25th day of *March* 1697, till *Michaelmas* then next following: which time the said *Bridgett* served accordingly. And at the said *Michaelmas* the said *Orpwood* contracted with the said *Bridgett*, from the said *Michaelmas* for one year ensuing, for the wages of thirty shillings: and the said *Bridgett*, according to the said last-mentioned contract, remained with the said *Orpwood* till some time in the month of *April* 1698; in which month, by the mutual consent of the said *Bridgett* and the said *Orpwood*, the said *Bridgett* left the said *Orpwood's* service; and the said *Orpwood* paid to the said *Bridgett* her proportion of wages then due. The sessions, upon hearing what could be alledged by counsel on both sides, did think the above-mentioned hire, and service aforesaid, continuing for the time of more than one whole year, to be a good settlement in the said parish of *Steventon*; and therefore do think fit to ratify and confirm the order made by the two justices of the peace: and the same is hereby ratified and confirmed accordingly. So that Dr. *Burn* has been led into the observations and computations which he has printed in his last edition, pa. 308, and pa. 317, by the inaccuracy

of.

of the three different reporters of that case. All of them mistake the true dates ; and two of them have mistaken them no less than ten years ; the other only two years. And all of them omit to mention that the second hiring was for a year, (an essential circumstance) they only say, “ to serve him for a longer time.” It is pity that so able and accurate a writer as Dr. Burn was obliged to depend upon such information. The latter case (of *South Moulton*) I cannot find ; though I have carefully searched the files of both the 9th year and the 10th year of king *William*, and sessions orders are usually filed in or a little before the term wherein the motion is made to quash them ; and cause is generally shewn the next term, or sometimes within the same term. It is not absolutely impossible that this case (of *South Moulton*) should be the very same with that of *Overton*. It has just now appeared manifestly, how very wide of the mark some reporters are, and how little they are to be depended upon. Lord *Raymond's* report of the *South Moulton* case is only from hearsay (of his friend *Herbert Jacob* :) it is not his own note. It is very loose : and no names of either person or parishes are specified ; an order was made to remove a woman from *B.* to *C.* His report * consists but of nine lines and an half ; and he shortly mentions what *Rokeby*, *Turton*, and *Gould* held. The late Lord *Fortescue* † has reported the case of *Overton* and *Steventon*, as of the same term, in the same loose manner, and indeed in the same number of lines ; and as shortly concludes with these words—*Per Rokeby, Turton, and Gould*, this answers the end of the act, &c. Both agree in the point determined : and it appears from both their reports, that the question was the same, viz. Whether it was a service for a year, within the new act. I have added this note, for the satisfaction of Dr. *Burn* ; and I hope it will be acceptable to him : some other gentlemen may perhaps think it long and tedious.

* 1 *Ld. Raym.*

† 426.

† *Fortesc.*
Rep. 316.

On *Saturday* the 17th of *May* last, a motion was made by * *Sir John Settlement* *Strange*, to quash an order of sessions reversing an order of two justices gained by hiring for a year, and service for a year ; made for the removal of *Mary Calcot* from *King's Norton* in *Worcestershire* to *Cambden* in *Gloucestershire*. The order of sessions states, that it appeared to them upon the examination of the said *M. C.* taken upon her oath in court, that she was upon *All Saints* day in the year of our Lord 1735, hired with *John Ellis* of *Cambden*, chapman, for a year, to spin wick-yarn, at the rate of 1s. 6d. a stone ; and that she was to provide herself with meat, drink, washing and lodging where she pleased : and that she spun for him the whole year ; and lodged in her said master's house, and boarded with him at *Cambden* ; and received 1s. 6d. a stone for her work, allowing her master 2 s. a week for her lodging and board. And upon her examination she said that by her said contract as aforesaid she thought she was not at liberty to work for any other master : but she thought that she was at liberty to play or be absent from her work, as long as she pleased ; being to be paid at a certain rate for her work done. Wherefore it is the opinion of the sessions that the said hiring and service aforesaid was not sufficient to gain the said *Mary Calcot* a settlement in the parish of *Cambden* : and accordingly they reverse the order of removal. Rule to shew cause. On shewing cause, the only question was, whether this hiring and service

gained by hiring for a year, and service for a year ;

though paid only in proportion to the work done, viz. so much per stone for spinning

yarn ;) but lodged and boarded with the master.

1 *Bur. Sett.*
Ca. 125, Trin.
13 & 14 Geo.
2, (June 19,
1740) *Rex v.*
inhabitants of
King's Norton.
Stran.
1139, S. C.
* He was

knighted on the Monday preceding (12th May, 1770;) being then his majesty's solicitor-general, and recorder of London.

was sufficient to gain her a settlement in *Cambden*. Lord chief-justice *Lee* thought it plainly a good settlement in *Cambden*. For here is a hiring for a year, and a continuing in the same service for a year: which are undoubtedly sufficient to gain a settlement. Mr. *J. Page*, and Mr. *J. Probyn* were of the same opinion, for the same reason. And they all agreed that it was not material what the service was. Mr. *J. Chapple* also concurred; and observed that the liberty she thought she had, of playing and being absent as long as she pleased, depended upon her own apprehension only; but was no part of the contract. *Per cur.* unanimously and clearly, order of sessions quashed. Order of two justices affirmed.

Settlement gained by hiring for a year, and service for a year; though the master and servant were at liberty to determine the contract at the end of any quarter; but did not do it. 1 Bar Sett. Ca. 203. Hil. 16 Geo. 2, (Feb. 10, 1742) *Rex v. inhabitants of Atherton*.

On *Saturday* last a motion was made by Mr. *Bootle*, to quash an order of sessions confirming an order of two justices for the removal of *Ralph Harrison* and *Martba* his wife and *Job* their child from the township of *Barton* in *Lancashire*, to *Atherton*, in the parish of *Leigh*, in the same county. Case—*Ralph Harrison*, being unmarried, and not having any child or children, and being legally settled in *Atherton*, was in the year 1729, hired by *Thomas Barlow*, an inhabitant of and legally settled in *Barton* for one year, at 4*l.* wages payable quarterly: and it was agreed between the said *Barlow* and *Harrison*, at the time of the said hiring, that either the said master or servant should be loose from or at liberty to determine the said contract or hiring at the end of any quarter of the said year; either of them giving a month's notice to the other. But it appears that no notice of dissolving or determining the said hiring or service was ever given by either the said master or servant; and that the said *Ralph Harrison* continued in his master's service in *Barton* aforesaid, the whole year. It also appeared, that the said *Ralph Harrison*, at the time of the said hiring, declared that the reason of the said hiring being made determinable at the end of any quarter upon such notice as aforesaid, was that he would not be hired so as to lose his former settlement. On shewing cause, now, against quashing the orders, it was said, by Sir *John Strange*, that it is essentially necessary that there be an absolute hiring for a year. The reason of it is, that it should appear that the person came fairly into the parish to get his livelihood there and to do real service, and not merely to gain a settlement. But this contract was determinable, by either party, at the end of every quarter: and the intention of the parties is most expressly specified, in the present case, to be that the man was not to lose his former settlement. This case differs from the case of *Rex v. the inhabitants of Stroude*, *Tr. 7 G. 2, B. R.* For there the contract was originally for a quarter of a year, but the maid was to continue for a year if her master and she liked one another: and the general case of hiring servants is much like that. But here are express negative words: and a particular time is fixed for the determination of the contract. On the contrary it was said, that there appears upon the face of this order, a design to evade the law. In the case of *Lidney and Stroude*, the original hiring was but for a quarter of a year: this is for a whole year. And in the case of *Rex v. the inhabitants of New Windsor*, *II. 8 G. 2, B. R.* Colonel *Meyrick* hired the servant for a month upon liking; and she was to go away on a month's wages

or a month's warning: but, as she was to have 5*l.* a year wages, and continued above a year, it was holden to gain a settlement. Lord Chief-justice *Lee* held it to be a good settlement at *Barton*, upon the authority of the cases cited. And he observed that the words of the acts * of par-
liament are complied with: for here is both a hiring for a year, and a ser-
vice for a year. The two reasons that seem to be the foundation for gain-
ing a settlement of this kind are the credit given to the servant, and the
service done by him. This conditional agreement is inserted into the con-
tract purely to avoid the settlement. It don't seem to have been intended
to be put in execution: it is plain, at least, that it never was executed. It
appears, in the event, most clearly, that this liberty of putting an end
to the service within the year was never taken: the service did in fact con-
tinue during the whole year. And the hiring is expressly stated to have
been for one year. It is therefore stronger than the case of *Lidney* and
Stroude, or than that of *New Windsor*. For, in the former, the first hiring
was but for a quarter of a year; and in the *New Windsor* case, the first
hiring was but for a month: but in both, it was, collectively, upon the
whole circumstances, taken to amount to a hiring for a year. Yet they
were, both, to be conditionally void, as well as the present hiring. There-
fore both orders must be quashed. Mr. *J. Wright*, and Mr. *J. Denison*
concurring—Per cur. † unanimously—Both orders quashed.

* See 3 & 4
W. & M. c.
11. sect. 7,
and 8 & 9 W.
3, c. 30, sect.
4.

† Mr. justice
Chapple was
absent.
Settlement by
hiring for a
year and ser-
vice for a year;
though the
wages were
received as
wanted, and
the servant
absent at di-
vers times
with leave. 1.
Bar. Sett. Ca.
230, East. 17
Geo. 2. (May
1st, 1744) Rex
v. inhabitants
of Beccles.
Stran. 1207,
S. C.

Two justices made an order for the removal of *Thomas Elem* and *Ann* his
wife from *Lowestoft* to *Beccles* (both in *Suffolk*;) and the sessions, upon ap-
peal, confirmed that order. Special case—*Thomas Elem*, the person re-
moved, being legally settled at *Beccles*, let himself, some short time before
Michaelmas 1732, to *Samuel Corbett* a blacksmith, in *Lowestoft*, at the
wages of 3*l.* or 3*l.* 10*s.* to serve him there for one whole year from the
said *Michaelmas* to the *Michaelmas* following, to receive the said wages from
time to time as he wanted; and accordingly entered upon his said service
on the *Michaelmas* day, and continued his said service until the *Michaelmas*
following: and then he again let himself for another year to his said master,
and continued about ten weeks; when he and his master agreed to part,
and actually did part. But it further appeared to the sessions, that the
said *Thomas Elem*, within the year, worked, with his master's consent, for
a week, with one *Lincoln*, as a journeyman blacksmith; and, with the
like consent, with one *Lawes*, for a fortnight; and at some times, not
exceeding twenty-four hours at any one time, nor above three days in the
whole, within the said year, with his master's consent, did go off to sea, in
a fishing-boat belonging to Mr. *Manclark*. And it was agreed between the
said *Elem* and his master, at the time of such absence, that the said *Elem*
should have all the wages he then earned, the said *Corbett* deducting during
the time of such absence in proportion to his aforesaid wages of 3*l.* or 3*l.*
10*s.* And that the said *Lawes*, *Lincoln* and *Manclark* severally paid him
the said *Elem* for the time he so worked with them; and the said *Elem*
allowed the said *Corbett*, out of his said wages, for the time of his said
absence: so that *Corbett* received no part of the wages the said *Elem* earned
during

during his absence; but only deducted a proportional part of the said wages of 3*l.* or 3*l.* 10*s.* Therefore the court [of sessions] is of opinion that the said *Elem* hath not gained any legal settlement at the parish of *Lowestoft* aforesaid, by virtue of the aforesaid service; and doth affirm the said order. On *Saturday* the 14th of *April* last, a motion was made by Mr. *Stamford* and Mr. *Lloyd*, to quash these orders; and the court did not seem then to doubt of its being a good settlement in *Lowestoft*. Rule to shew cause. Cause was now shewn: and it was argued. In support of these orders, it was urged by Mr. *Pilsworth* and Mr. *Vanbeythuissen*, counsel for *Lowestoft*, that what was here stated amounted to a dissolution of the contract: and when the contract was once dissolved, it could not be taken up again and continued. It appears also, from the manner of the wages being payable, (not at the last, but at particular precedent times,) that he was no more than a journeyman to *Corbett*. The act of 3 & 4 *W. & M. c.* 11, has been construed strictly, with regard to hirings: 2 *Salk.* 535, the case of *Dunsford* and *Ridgewick*. And there is the same reason for strictness with regard to service. In *M. 1 G. 1. B. R.* between the parishes of * *Pawlet* and *Burnham*—the settlement was holden to be in *Burnham*; because the servant went away three weeks before the end of the year, by consent of the master, and 6*s.* was abated of his wages. Lord Chief Justice *Lee* observed that the whole absence of the present pauper in the first year, was just three weeks and three days, by the consent of his master: and the money deducted out of his wages was to be in proportion to his absence. First, it appears that the parish of *Lowestoft* have had all that the words or the intention of the act of parliament require: for, there was a clear hiring for a year; and, taking in the ten weeks of the second year, a service for more than a year. We can not intend any thing of a fraud: for none is stated. The question depends upon † two acts of parliament. Upon the ‡ negative act, it is not necessary that the service be with the same person: it is sufficient if it be with the successor in the farm, or the assignee. Therefore this act has not been taken so strictly. Then the agreement about the payment of the wages, as the servant might want it—will not vitiate the contract. Nor will the contract be dissolved by any thing here stated. It is only a licence of departure for a certain time: the contract remains. Indeed where the servant departed, by consent of both parties three weeks before the end of the term, the contract was dissolved; as in the case of *Pawlet* and *Burnham*. And according to the cases that have been determined, the subsequent service of ten weeks may be taken in, in the present case. But the service by the master's consent, with another person, was service of the master: it is not necessary that the service be with the same person. Nay, if it had been without the master's consent, yet the absence had been dispensed with, by the master's thus receiving him again. Therefore the original order is wrong; and both orders must be quashed. The three other judges concurred in opinion That this was no dissolution of the contract, but a mere lending of the service of his servant: than which, nothing is more customary, in harvest-time. Per cur. unanimously—Both orders quashed.

* See Foley
206.

† See 3 & 4
W. & M. c.
11, 8 & 9 W.
3, 30.
‡ 8 & 9 W. 3,
c. 30.

Two

Two justices made an order for the removal of *Hannab Wall*, spinster, from *Langdon* in *Staffordshire* to *Greenwich* in *Kent*: and, upon appeal, the sessions confirmed that order. Special case—*Hannab Wall*, the pauper, is the daughter of *George Wall* deceased; who, in his life-time, declared to a witness now examined, that he had hired himself for a year and served a year as a livery-servant, at 7*l.* wages, to one captain *Saunderson*, commander of the *William and Mary* yacht, who had a house and family at *Greenwich*, and resided there when not absent on the king's service; and that his master made frequent voyages to and from *Holland*; and that he always attended him in the same; that he never was forty days together at *Greenwich*, though during his service he might be there forty days at different times. And thereupon the sessions adjudged that the said *George Wall* was settled in the said parish of *Greenwich*: under whose settlement the said *Hannab Wall* derived her's; not having gained any in her own right. On *Wednesday* the 14th of *November* last, Mr. *Legge* moved to quash these orders; for that upon this case, as stated, there is no foundation to adjudge her settlement to be at *Greenwich*. And a rule was made to shew cause why they should not be quashed. The counsel for the order (Sir *John Strange*) who was now to have shewn cause against quashing them, proposed to send the sessions order back to the sessions, that they might state the facts, instead of stating mere evidence; which is all that they have at present done. And Mr. *Lloyd*, who was on the other side, observed that it was not even a state of evidence, but only of what a man once said; and that too was only that he might be forty days there at different times. Rule enlarged. On *Saturday* next after the octave of *St. Hilary*, 18 G. 2, by consent of Sir *John Strange*, and on the motion of Mr. *Legge*, it was referred to the justices to state the facts more fully. And afterwards, on *Wednesday* 3d *July* 1745, upon the motion of Mr. *Jarvis* and Sir *John Strange*, it being then stated that he did reside forty days at *Greenwich*, at different times; and Mr. *Legge* (who first moved to quash them) being now satisfied—Both orders were affirmed.

Two justices made an order for the removal of *George Witworth* from *Eakring* to *Selson*: And, upon an appeal, the sessions discharged that order. Special case—*George Witworth*, a poor child of *Eakring*, and put out by the proper officers, by indentures regularly executed, and allowed by two justices of peace, to *Richard Tomlinson* of *Eakring*, to serve him as a parish apprentice till he should accomplish his age of twenty years, served his master under these indentures, for several years, at *Eakring*. About three years before he attained twenty years of age, he ran away from his master, and loitered, for some time, about the country. In *June* 1749, *Tomlinson*, the master, died: and at *Martimas* after, the said *Witworth* hired himself as a servant to *William Flint* of *Selson* for a year, and served him that year at *Selson*; and at *Martimas* 1750, hired himself for another year, and served that year also with the said *William Flint* at *Selson*; and received all his wages, to his own use, the executors of *Tomlinson* taking no notice of him: but the said *George Witworth* did not attain his age of twenty years,

till 1

Settlement gained by hiring and service for a year by an apprentice, after the death of his master. 1 Bur. Sett. Ca. 320. East. 26 Geo. 2, (June 1st, 1753) Rex v. inhabitants of *Eakring*.

till January 1750. And the sessions being of opinion that the said *G. W.* did not, by virtue of such hiring and service at *Selson* under the circumstances aforesaid, gain a settlement in the said parish of *Selson*, they reverse and discharge the original order. Upon *Friday* the 18th of last month a motion was made by *Mr. Taylor White*, to quash this order of sessions: for that after the master's death, the apprentice was at liberty to hire himself: and as he was hired for a year and served a year in *Selson*, his legal settlement was there. Apprenticeship is a personal trust between the master and servant; and is determined by the death of either master or apprentice. *Eyre* says this, in 1 *Salk.* 66. *Rex v. Peck.* *Mich.* 10 *W.* 3. *Mr. Wilmot* was now to have shewn cause against quashing the order of sessions: but he candidly owned that he could not defend it. He then objected to the original order. To this order he made two objections—1st, That the parish of *Eakring* is at first mentioned in it; and then it goes on—And has lately intruded himself into your said town of *Eakring*. So that it is uncertain whether *Eakring* be a town, or a parish; which are quite different things. In answer to this objection, *Sir John Orway's* case, 2 *Vent.* 31, was cited; where a fine and recovery of lands in *Ribton* was holden to serve for land which lay in the parish, but out of the vill of *Ribton*. *Wilmot* replied that this case was not to the present purpose: for the judges there went upon the foundation that common recoveries were not to be overthrown by nice constructions, &c. 2d Objection to the original order—The pauper was only alledged to be likely to become chargeable there. Now, chargeable there, does not alledge that the pauper was likely to become chargeable to the parish: which it is necessary that the order should do. (The Chief-justice being gone—) The three judges held the first objection to be over nice; and over-ruled it. And *Mr. justice Denison*, and *Mr. justice Foster* thought the same, concerning the second objection: though *Mr. justice Wright* took it that the word “there” did not necessarily import that the pauper was likely to become so to the parish. But per cur.—Order of sessions quashed: original order affirmed.

Settlement
gained by
hiring and ser-
vice for three
quarters of a
year; when
the master
complained
of the servant's
marrying
within the
year, and the
justice allow-
ed a discharge
against the
master's con-
sent. 1 Bur.
Sett. Ca. 322.
Term. 16 & 27

Two justices made an order for the removal of *Richard Allen* and *Anne* his wife from *Hanbury* in *Worcestershire* to *Tardebigg* in *Warwickshire*: and upon an appeal, the sessions quashed that order. Case—The pauper was hired for a year, from *Michaelmas* to *Michaelmas*: he came three days after the former *Michaelmas*; and stayed one day after the latter; and was absent, at different times, near a fortnight, for which absence *6s. 6d.* were abated in his wages. This service was in *Tardebigg*. From thence, he went to *Hanbury*; where he was hired for a year, and served three quarters; and then married to a woman with child. Of this, his master complained to a justice of peace—The justice thought the matter complained of to be a sufficient cause for the pauper's being discharged; and allowed of his discharge; but made no order in writing touching the matter. The master thereupon discharged him, against the pauper's consent. Upon *Tuesday* 14th of *Nov.* last, a motion was made by *Mr. Ingram*, to quash the order of sessions: and a rule was made to shew cause. On shewing cause on

Monday

Monday 28th of the same month (of Novem.) Mr. Bathurst, for the inhabitants of *Tardebigg*, argued that the settlement was in *Hanbury*; at least, not in *Tardebigg*. To prove that it was no settlement in *Tardebigg*, he cited the following cases. *P. 7 G. 1, B. R. Rex v. inhabitants of Ifflip* * was an absence of four days to see a sick mother; and six days, sick; and going away three days before the end of the year, having asked leave, and for a reasonable cause. All this indeed did not vitiate the settlement: for the servant continued in the service, in point of law; though he actually left it three days before his time expired. But in *M. 9 G. 2. B. R. Rex v. inhabitants of Castlechurch* there was a hiring for a year; and the service was quitted, by consent of the master, twelve days before the end of the year: and it was holden to be no settlement. And *Rex v. inhabitants of Newton, M. 14 G. 2*, shews that it must be a complete year. As to the settlement in *Hanbury*—The justice could not discharge the servant against his consent: for it appears by, and was agreed in *Bro. Abr. title Laborers pl. 27*. That the master can not discharge his servant within the time &c unless he agrees to it; no more than the servant can depart, without the agreement of his master. The act of parliament of 5 *Eliz. c. 4, sect. 5* does not make this marrying during his service to be a reasonable and sufficient cause of discharge; such as a justice of peace may allow to be so for putting away a servant without his own consent. And in the case between the parishes of *Farringdon* and *Wilcot, P. 2 Ann. 2 Salk. 529*, A servant who marries during his service may serve out his time: and if he does, it shall gain a settlement, by the opinion of *Holt* and *Gould*, against *Powell*. Therefore he must be considered, in point of law, as having continued in the service to the end of the year: for the discharge by the justice was absolutely void. Lord Chief-justice *Lee* said the great question is upon the cause of discharge; whether that be sufficient. But as the cause and manner of discharge were a new point, he thought it not fit for the last day of a term. Adjourned. Mr. Bathurst now proceeded, and argued—1st, That no settlement was gained in *Tardebigg*; because he did not serve there a whole year. Absence either at the beginning of the year or just before the end of it, will vitiate the service. 2dly, That his marriage is no dissolution of the contract, in *Hanbury*. To which point he cited 2 *H. 4, 13 b. case 3*. A man may marry my servant, a feme sole; but can not take her out of my service. He cited also *Fitz-Herbert's Abridgement*, title *Barre, pl. 214*. In the act of 3 & 4 *W. & M. c. 11, sect. 7*, the word unmarried only relates to the time of the hiring. And so it was held by *Holt* and *Gould*, against *Powell*, in the case between the parishes of *Farringdon* and *Wilcot*. The case between the parishes of *Clent* and *Elmley Lovat, Mich. 1 G. 1, Foley's Poor Laws 160*, proves fully that intermediate marriage does not prevent a person hired for a year from gaining a settlement. And Sessions Cases, *Edit. 1750. S. C.* says, An hiring and service gains a settlement, notwithstanding marriage within the year. And then it goes on thus: *N. in case of Farington*, one hired for a year in *Farington* marries: two justices remove out the servant, by consent of the master, to *Wilcote in Oxfordshire*, within the year. Upon appeal of *W.*

Geo. 2. (June 28, 1753)
Rex v. inhabitants of Hanbury.
* 1 Sir John Strange 423.

this fact stated. Order confirmed : but *King's Bench* quashed it. 3dly. Mr. *Bathurst* observed that the justice has made no order in writing. Now 5 *Eliz. c. 4, sect. 5*, directs the justice to hear and order ; which implies an order in writing, as all their orders are : whereas here is no order at all, as far as appears by the state of the case. Mr. *Ingram* on the other side (for the inhabitants of *Hanbury*) said, there are two questions in this case—1st. Whether the pauper gained a settlement in *Tardebigg* : 2d. Whether he gained a subsequent one in *Hanbury*. These questions will depend on the construction of 3 & 4 *W. & M. c. 11*, and 8 & 9 *W. 3, c. 10, sect. 4*. First—The little absence of three days at first, and a fortnight afterwards, for which there was a deduction of wages, will not destroy the settlement in *Tardebigg*. To prove this, he cited *P. 7 G. 1. Rex v. inhabitants of Ifflip* * ; and the case between the inhabitants of *Eaton* and *North Wheatly*, *Tr. 8 & 9 G. 2. Rex v. inhabitants of Castlechurch, M. 9 G. 2. and Rex v. inhabitants of Beccles, P. 17 G. 2*. Here the service continued during the whole year : for he was a servant from *Michaelmas* ; and the absence for the three first days was dispensed with by the master's receiving him. It is not necessary to be actually in the service. *Bro. Abr. title Laborers, pl. 7, 11*. sufficiently prove that a person may be a proper and true servant without that. Second point—(the subsequent settlement in *Hanbury*—) He admitted that the marriage did not make the contract void ; but insisted that it made it voidable, at the election of the master. The servant is not at liberty to depart ; but the master may discharge for this cause. Mr. *Bathurst's* cases out of the Year-book are determined upon the old statute of *Laborers*, (*23 Ed. 3*.) which is repealed by 5 *Eliz. c. 4, sect. 1*. The 11th section of this act is in the disjunctive—No person shall put away his servant before the end of his term, or servant retained according to that act depart from his service, unless it be for some reasonable cause or matter, or be allowed before two justices, &c. or one at least, to whom any of the parties grieved shall complain : which said justices or justice, &c. shall have and take upon themselves the hearing and ordering of the matter between the master and servant according to the equity of the cause. Therefore the justice was the proper judge of this matter, and has done every thing that the statute requires. An order to discharge a servant needs not be in writing. *Bro. Abr. title Laborers, pl. 38*. A servant may be discharged by his master, by parol. The contract itself was made by parol : and therefore it may be dissolved by parol. And this same justice who ordered the discharge, made the order of removal. I do not deny that a married servant may gain a settlement : but I say that it is in the option of the master. The case of *Farrington and Wilcot*, in 2 *Salk. 529*, is an authority for us. It is adjudged that the justices cannot annul the agreement between master and servant, unless it be upon complaint of the master. There the master did not complain ; nor was there a previous application to a magistrate for his discharge, before the order of removal. As to the case of *Clent and Elmley Lovat*—It was there laid down that the marriage did not destroy the settlement where the servant continued. But it does not follow that the master can not discharge his servant

* 1 Sir John
Strange 423.

on marriage. If then the pauper himself be removable—To what place must the wife be sent? the answer is plain: she must certainly be sent to *Tardbigg*, the settlement of the husband: for he has not yet gained any at *Hanbury*, before the end of the year's service there. Therefore it follows, that he must be sent thither too: otherwise, it would be a temporary divorce. Lord Chief-justice *Lee* and the three other judges thought the first point (about the settlement in *Tardbigg*) sufficiently answered by the cases cited by Mr. *Ingram*. In the case of *Rex v. inhabitants of Ilip*, there were a great many absences; and one of them was three days before the end of the term, contrary to the will, and after the refusal of the master; and the servant did not return afterwards; and an allowance was made in the wages for the time he was absent: and yet it was holden to be a good settlement. Therefore this case is in point, as to every thing, but the difference of the three days being at the beginning; which does not make any real difference at all: for service has not been taken strictly, though hiring has. The three days absence of the servant in the beginning of his service was purged by the master's receiving him. 2d Point, as to the discharge of the servant—That ought to be done by the justice as a magistrate, that is, by an order. It is an act of jurisdiction in the justice; and therefore ought to be in writing. The act of 5 *Eliz. c. 4, sect. 5*, requires a sufficient cause of discharge, to be allowed by one or more justices of peace, on hearing and ordering the matter. Now here does not appear to be any hearing: and it is certain, there is no ordering. Nor, as Mr. Justice *Wright* thought, is there any reasonable cause: for what objection is the marriage? 'tis no misdemeanour: and the justice can not discharge but for misdemeanour. Therefore he is not discharged; nor (by Mr. Justice *Denison* and Mr. Justice *Foster*) can he be thus discharged against his own consent. Consequently, the settlement at *Hanbury* goes on; and is his last legal settlement. Per cur. unanimously—The last legal settlement is in *Hanbury*: and therefore they affirmed the order of sessions which had quashed the original order made for removing the paupers from *Hanbury* to that part of *Tardbigg* which is in the county of *Warwick*.

Two justices made an order for the removal of *Samuel Wilshaw* together with *Mary* and *William* his children from the township of *Warflow* and *Elstone* in *Alstonfield* in the county of *Stafford* to *Ecclesal Bierlow* in *Sheffield* in the county of *York*: and the sessions, upon an appeal, confirmed that order. Special case stated—The pauper *Samuel Wilshaw*, being sixteen years of age, was bound out, by the parish, an apprentice to *William Ashforth*, a cutler, and an inhabitant of the township of *Ecclesal-Bierlow*, for the term of eight years. He resided there, under that indenture, upwards of five years. After he had attained the age of twenty-one years, he and his master came to an agreement together, to cancel the indentures of apprenticeship: and thereupon the master delivered up the said indentures to the pauper to be cancelled: and the same were accordingly cancelled. That afterwards the pauper was hired for a year to one *Robert Mellor* of *Warflow*; and served for a year in *Warflow*, in pursuance of such hiring; and received his whole year's wages. And the pauper has gained no settle-
Settlement gained by hiring and service for a year by an apprentice, though the term for which he was bound apprentice was not expired: but the indentures were cancelled. 2 Bur. Sett. Ca. 562. East. 6 Geo. 3. (May 12, 1766.) Rex v. inha-

bitants of Ecclesfield Bierlow in Sheffield. ment since the said service with *Robert Mellor*. On *Wednesday* 5th *February* last, a motion was made by *Mr. Kenyon*, to quash these orders. Rule to shew cause. The question was, Whether an apprentice of full age (bound out when under age, by the parish,) can agree to cancel the indentures; and afterwards gain a settlement for himself by a hiring and service for a year. *Sir Fletcher Norton* and *Mr. Gould* (on behalf of the township of *Warflow*) now shewed cause against quashing the orders. This apprentice was not *sui juris*, when he entered into the contract to serve in *Warflow*: nor could he be compelled to perform it. And he could not gain a settlement there, as he served under the apprenticeship, with the consent of the master, and for the master's benefit. The case of *Alice Wheeler*, in 2 *Strange* 1001, is of the latter kind. But here, the master has no concern in the matter. They cited *Dalton* 180, and 2 *Strange* 582, the case of *Buckington* parish; 2 *lord Raym.* 1352, S. C. and the case of *Rex v. inhabitants of Austrey*, where it was determined that an apprentice under age can not dissolve the indentures. Here, indeed, the apprentice is above 21. But this is a binding by the parish under 43 *Eliz. c. 2*; and therefore the apprentice, though above 21 at the time of the transaction, could not cancel the indentures, without the approbation of the overseers of the parish: their consent was essentially necessary to his being discharged from the indentures. Lord *Mansfield*—There seems to be no necessity of the parish-officers joining in the consent to discharge this apprentice. There is no authority for it: and I see no inconvenience to the parish or to any one else, in its being done without their concurrence. The act of parliament inpowers them to bind the man-child out apprentice till he comes to the age of 24. And the act * of parliament was necessary to make valid the binding of the male parish-apprentice till his age of 24; for he could not be bound longer than 21, without the aid of the act: and two justices of the peace are to assent to this. But the same reason don't hold, as to the discharge of the apprentice: this concerns the master and the apprentice only. The latter part of the apprentice's time is of most service to the master. Therefore the apprentice being of age, if the master and he agree to it, they two may dissolve the contract. *Mr. Justice Wilmot* concurred; and thought alike with Lord *Mansfield* as to the reason of the parish-officers consent being required to the binding, and the necessity of an act of parliament in order to oblige the apprentice to serve on till 24 years of age, if bound agreeably to the directions of it; whereas he would not otherwise have been obliged to serve on, after his coming of full age. But if after he is of full age, the master and he agree to it, the indentures may be cancelled without the consent of the parish-officers. If so, then this person was *sui juris* when he hired himself at *Warflow*: and consequently, he gained a settlement there by a hiring for a year and service for a year. *Mr. Justice Yates* concurred: and he observed, that this objection of the want of the consent of the parish-officers does not come from the parish who bound him out; but from the township of *Warflow*, who have nothing to do with it. *Mr. Justice Aston* being like-
wife

* See 43
 Eliz. c. 2,
 sect. 5.

wife of the same opinion, the rule was made absolute for quashing both orders. Both orders quashed.

Two justices removed *Thomas Thacker* and *Margeret* his wife, and *Anthony, Thomas, James, William, Hannab, and Mary*, their children, from the vill of *Creyton* in the county of *Stafford* to *Milwich* in the same county: and the sessions confirmed their order, upon this case stated—*Thacker* was hired by *Mr. Blurton* of *Milwich*, for eleven months, for 4*l.* 10*s.* And it was agreed between them, That *Thacker* should give *Mr. Blurton* a month's service in, beyond the eleven months. *Thacker* served *Mr. Blurton* the eleven months, in *Milwich*; and also all the given-in month, except the last three days: and as to those three days, *Thacker* could not say whether he served them, or went away without serving them; but he received the whole 4*l.* 10*s.* wages. The sessions confirmed the order; being of opinion that this was a hiring for a year, and a service for a year. On *Saturday 5th February 1757*, *Mr. Norton* moved to quash these orders; and had a rule to shew cause. He made two objections. 1st, This is not a good hiring for a year, within 3 & 4 *W. & M. c. 11*, being only for eleven months. The sessions seem to consider the hiring as fraudulent; but have not stated it to be so: therefore this court can not presume it to be fraudulent. In 1 *Strange* 83, *Rex v. inhabitants of Haughton*—several hirings and service for eleven months gained no settlement. In 2 *Salk.* 535, between the inhabitants of *Dunsfold* and *Ridgwick*, two several hirings for half a year each, and service for a year, gained no settlement. And by 1 *Strange* 143, between the parishes of *Coombe* and *West Woodhay*—There must be a complete hiring and service for a year, in order to gain a settlement. 2dly, 'Tis not a good service for a year: because three days are wanting, at the end of it. In 2 *Strange* 1022, between the parishes of *Seaford* and *Castlechurch*, going away twelve days before the end of the year prevented a settlement; though all the wages were paid. The servant's going away before the end differs from the middle of the year. In the former case the service is discontinued: in the latter, not; but the absence is purged by the master's receiving him again. So that, upon the whole state of the case, it is plain, here was neither a hiring for a year, nor a service for a year: whereas both these are requisite to gain a settlement by 3 & 4 *W. & M. c. 11*. *Mr. Gilbert*, contra, for supporting the orders, insisted—1st, That this was clearly a contract to serve for a year; and cited *Co Litt.* 42, *b.* If a man retain a servant generally, without expressing any time, the law shall construe it to be for one year. And so it was agreed in the case of *Rex v. inhabitants of Wincaunton*. So a conditional hiring has been holden a good hiring for a year. 2dly, Indeed 8 & 9 *W. 3, c. 30.* requires a service for a year. But yet the present case is within the settled resolution of this court. It was solemnly determined, in *P. 7 G. 1, 1 Strange* 423, *Rex v. inhabitants of Islip*, that absence for the last three days, though against the consent of the master, did not hurt the settlement. And the court, *viz.* Lord Mansfield, Mr. Justice Denison, and Mr. Justice Foster, were extremely clear; 1st, That this

Settlement gained by hiring for 11 months, and to give in a month's service. It is a hiring and service for a year. 2 *Bur. Sett. Ca. 433.* Trin. 30 & 31 Geo. 2. (June 20, 1757) *Rex v. inhabitants of Milwich.*

this agreement (taken all together) is a manifest contract to serve for a year; notwithstanding the form of expression: (which, by the way, they considered as an attempt to prevent the man's gaining a settlement, by a very paltry evasion.) The real question is no more than, Whether eleven months and one month make twelve months. There are no particular technical words necessary, to make a hiring for a year. The substance of this agreement is to serve twelve months, for 4*l.* 10*s.* And what signifies the variation of expression? Every contract to serve, is a contract to serve * for a year; unless there be something to explain it otherwise. Now certainly here is nothing to explain it otherwise. And Mr. Justice *Foster* observed that this was an entire single contract; and not like to the cases of different contracts, at different times: and he added, that no action would have lain for the wages, till the end of the whole twelve months. 2dly, That as to the servant's going away three days before the end of the year—The state of the fact don't support the objection: for it don't appear that he did go away before the end of the year. It is only stated that he could not say whether he served those three days, or went away without serving them. But it is positively stated that he received the whole 4*l.* 10*s.* wages: which, at least, seems to imply the master's consent or permission. Whereas in the case of the King v. the inhabitants of *Ipslip*, P. 7 G. 1, in 1 *Strange* 423, it was holden that the servant's going away three days before the end of his year, directly in opposition to his master's will and express prohibition, upon a reasonable occasion, and upon a reasonable request (unreasonably refused,) did not vitiate the settlement. Per cur. unanimously—Both orders affirmed.

Settlement gained by hiring for 3 years, under certain conditions; and service for one year and a quarter; tho' at the end of six months, the servant was absent for the space of three months, being ill; but when he returned, the master received him. 1 Bur Sett. Ca. 302. Trin. 24 & 25 Geo. 2. (June 22, 1748) Rex v. inhabitants of *Ozleworth*.

Two justices made an order for the removal of *William Hewett* from *Wotton under Edge* to *Ozleworth*, (both in *Gloucestershire*;) and the sessions, upon appeal, confirmed that order. Case—The pauper, *William Hewett*, had gained a settlement in *Ozleworth*; but, subsequent to it, agreed with *Thomas Palsor*, an inhabitant legally settled in *Wotton under Edge*, cloth-worker, to serve him in the said business for three years, at 3*s.* a week for the first year, 3*s.* 6*d.* a week for a second year, and 4*s.* a week for the third year. He was to work only twelve hours in a day, and to have one penny for every hour he should work above the twelve hours: and that the said *Thomas Palsor* should retain 6*d.* a week out of the above wages, during the said three years, by way of a deposit or security for the said *William Hewett*'s performing his agreement; but which said 6*d.* by the week was to be paid to the said *William Hewett* at the end of the said term, if he performed the said agreement, or if the said *T. P.* should discharge him of the said service before the end of the said term; but was to be kept by the said *T. P.* if the said *W. H.* quitted the said service before the end of the same term. That the said *T. P.* was not to find or provide meat, drink, washing or lodging for the said *W. H.* during the said term: and that it was understood between the said *T. P.* and *W. H.* that the said *T. P.* might turn the said *W. H.* out of his service at any time during the term, paying to the said *William* the sixpences before retained.

That

That the said *W. H.* worked with the said *T. P.* under the said agreement, for about six months; and then, being ill, absented himself from the service for about three months; and then returned to, and was received by the said *T. P.* and continued to work for him under the said agreement, till the time of his being removed by the said order of justices, being for about three quarters of a year after the said return to the said *Thomas Palsor*: and that, during the time of his working with the said *T. P.* and during his sickness, the said *William Hewett* lodged in the said parish of *Wotton under Edge*; but not in the said *Thomas Palsor's* house. On Tuesday the 7th May last, a motion was made by Mr. Bishop, to quash these orders: who insisted that this was a good settlement in *Wotton under Edge*, upon the special case above stated. The sessions could not, he said, or ought not to apprehend that the absence of the servant during his illness could vitiate the settlement: especially, as the master received him again, when it was over. In *Rex v. inhabitants of Ipslip**, *P. 7. G. 1, B. R.* the servant was absent, being sick, six days; to see his sick mother, four days; and went away three days before the end of the year; and yet it was held a good settlement. In *Rex v. inhabitants of Eaton, Tr. 8 & 9 G. 2, B. R.* three weeks absence of the servant was held to be purged by the master's receiving him again: and the court declared against nicety in construing these settlements. In *Rex v. inhabitants of Beccles, P. 17 G. 2, B. R.* the servant's working with other persons, by consent of the master, did not vitiate his settlement. And in *Rex v. inhabitants of Goodneston, Tr. 18 & 19 G. 2*, the servant went to the herring fishery three weeks before the end of the year, by licence: yet it was holden a good service. As to the liberty of ending the contract, on forfeiting the sixpences, and what was understood between the master and the pauper about it—he mentioned the case of *Rex v. inhabitants of Wincaunton*, in the last Hilary term, where the apprehension of the pauper was holden to be quite immaterial. As to his lodging—He is stated to have lodged in the parish: there was no need that he should lodge in *Palsor's* house. Here is an actual hiring for three years; and a service under it for one year and a quarter. Therefore both the two justices and the sessions have judged wrong, in holding that no settlement was thereby gained. Besides (as Mr. Ford, who was on the same side, observed) the two justices removed him; whilst he was actually in his master's service. The counsel who now shewed cause insisted on the liberty of quitting, as vitiating the settlement; alleging that the hiring ought to be absolute and conclusive. Lord Chief-justice Lee—But how could the justices remove him out of the service? It appears that the man was actually in the service, at the time of the removal. Both he and Mr. Justice Wright thought the orders must be quashed. Mr. Justice Wright observed that the pauper had served a year and a quarter. The two other judges (*Denison* and *Foster*) were both silent. *Per cur.* Rule made absolute to quash both orders.

* See 1 Sir J. Strange 423, S. C. very well reported.

Two justices made an order for the removal of *Thomas Smith*, *Mary* his Settlement wife, and *John* their son from *Tutbury* to *Ilam*, (both in *Staffordshire*;) not gained by hiring for a year and,

year, where and, upon appeal, the sessions confirmed that order. The case stated was the time upon only this—*Rowe Port* of the parish of *Ilam*, esq. hearing that the pauper liking previously was a likely boy to serve him as his postilion, sent to the pauper's father, to have the pauper upon liking. After the pauper had served Mr. *Port* eight weeks on liking, Mr. *Port* hired him for a year to commence from the beginning of the said eight weeks. He served Mr. *Port*, in the said parish of *Ilam*, including the said eight weeks, a year and ten days, and no longer. On *Wednesday* 26th *June* last, a motion was made by Mr. *Gilbert*, to quash these orders: for that this retrospective hiring is no hiring for a year, within 3 & 4 *W. & M. c.* 11. It ought to have commenced from the time of the hiring. Rule to shew cause. Upon shewing cause on *Friday* 25th of last month, the following cases were cited.—*Rex v. inhabitants of Aynhoe**, *M.* 1727, 1 *G. 2, B. R.* where it was settled that a hiring for a year and a service for a year acquire a settlement, although the hiring and the service are not under the same contract. In the case between the parishes of *Lidney* and *Stroude*, the first hiring was conditional for a quarter of a year, upon liking; and if they did like each other, then to continue for a year: yet it was holden a good settlement; as they did like each other; and the year's service was performed. In the case between the parishes of *New Windsor* and *Chepping Wycomb*, *Hil.* 8 *G. 2, B. R.* it was uncertain till the end of the year, whether the hiring would be for a year; yet happening so in event, it was holden good. The maid was hired to go into Col. *Meyrick's* service a month upon liking, at 5 *l.* a year wages; but was to go away on a month's wages or warning on either side. In the case between *Wandsworth* and *Putney*, *M.* 15 *G. 2*, a general hiring and a conditional hiring performed, were both allowed to be good, to acquire a settlement. From which cases it was argued, that this was good, as a general hiring for a year; and also as a conditional hiring, completed by the event. And here was plainly a service for a year: and there is no pretence of any fraud. The counsel for quashing the orders (Mr. *Ford*, Mr. *Gilbert*, Mr. *Henley*, and Mr. *Simpson*) cited *Rex v. the inhabitants of South Cerney, Tr.* 5 & 6 *G. 2*, where the pauper was hired at statute-fair the *Wednesday* after *Michaelmas* to *Michaelmas* following, and the court would not depart from the act; but held it to gain no settlement, though the custom of the country was so. The case between the parishes of *Windsford* and *Chew Magna*, *M.* 22 *G. 2*, proves that service alone will not do; unless the hiring be as a servant. Indeed if there be such a hiring, the hiring and service shall be coupled together; as in the case of *Aynhoe**. In *P.* 5 *G. 2*, between the parishes of *West Woodbay* and *Coombe†*, a hiring from the statute, which was only two days after *Michaelmas*, to the next *Michaelmas*, was holden not good. So that this retrospect will not do. Indeed if there had been a general contract for a year when he first came, it had been otherwise. But here he only came to see if he should like and be liked. So that he was not a conditional servant at the first: there was no contract at all. To these cases it was replied by the counsel who endeavoured to support the orders, that only the last case of *West Woodbay* and *Coombe* §, was applicable to the present: but in that, the actual

* 2 Lord

Raym. 1511.

† See Cases of Settlement,

No. 107.

No. 119, 120.

Foley, p. 150.

§ Hil. 1718.

tual service did not commence till three days after *Michaelmas*: whereas here, the actual service was concomitant with the hiring. The court had some doubt about the validity of this hiring; and therefore ordered it to stand for further argument, by one single counsel on each side: and in the mean time, they said, they would themselves look into the cases which had been cited. After it had now been accordingly again argued, by Sir *Richard Lloyd*, in support of the orders; and Mr. *Henley*, against them—The court held this case to differ from all the former cases. The sole question is whether here be a hiring for a year. It is agreed that there must be a hiring for a year, and a service for a year, to gain a settlement; and that a retrospect will not do. Which latter is the case here: for the lad came upon liking; and at that time, there is nothing stated of a hiring; nor till eight weeks after, during which eight weeks both parties were at liberty. Mr. Justice *Foster* thought the cases of *Lidney* and *Stroude*, and *Chepping Wycombe* and *New Windsor*, had carried the matter as far as possible; and if they were new questions he should doubt of those resolutions: but both these were hirings for a year, previous to the service; and the conditions were performed. Mr. Justice *Foster* observed also, that the safest way is to adhere strictly to the words of the act of parliament: for refinements upon these questions have produced infinity of questions and difficulties. The court held this to be no settlement. Therefore, *Per cur.*—The rule must be made absolute for quashing the orders. Both orders quashed.

Two justices made an order for the removal of *Abraham Greaves*, *Elizabeth* his wife, and *Ann* their daughter, from the township of *Gouldesborough* to the township of *Newton* in the *Willows*, otherwise *Newton-Kine*; (both in the west riding of *Yorkshire*;) and the sessions, upon appeal, confirmed this order. Case.—*Abraham Greaves*, the person removed, was in the year 1733, on *Wednesday* after *Martinmas-day*, being the fourteenth day of *November* and the day on which the first statutes for the public hiring of servants was held at *Knareborough* in the said riding, hired by *Richard Ellerbeck* of *Newton* to serve him from that time till *Martinmas-day* following: and a fortnight after, and in pursuance of that hiring, he went into the service of the said *Ellerbeck*, and remained there till some time in the spring following, when by accident he became lame, and by his master's consent left the service for some weeks, and then returned and stayed till the tenth day of *November* following, being the day before *Martinmas-day* 1734; on which day his master and he accounted, and he left his master's service. On the *Wednesday* following he went to the first statutes at *Knareborough* aforesaid; where he contracted to serve one *John Housfeman*, till *Martinmas* following, and received 2s. 6d. as earnest: but before he entered into his said service, viz. on the *Sunday* following, the said *Housfeman* sent him word he was otherwise provided; and discharged him of his contract. The said *Abraham* on the *Thursday* following, being the 21st day of *November*, went to *Wetherby* in the said riding, in which town two public statutes for the hiring of servants are and time out of

Settlement not gained by hiring at statutes from the 11th of November till Martinmas following (the 11th;) because it was not a hiring and service for a year. 1 Bur. Sett. Ca. 157. (Nov. 28, 1740) Mich. 14 Geo. 2, Rev. v. inhabitants of Newton.

mind have been annually held; one, on the first *Thursday* after *Martinmas*; and the other, (commonly called the latter statutes or latter club-day,) on the second *Thursday* after *Martinmas-day*; and on the said latter club-day, being the said 21st day of *November*, was hired by *John Simpson*, an inhabitant in *Goldesborough*, to serve till *Martinmas* then next. That in pursuance of such hiring, he immediately entered into the service of the said *Simpson*, and served him till the *Martinmas-day* following, in the township of *Goldesborough*. The sessions were of opinion that *Abraham* did not gain any settlement in *Goldesborough* by the said hiring with *Simpson*; but that he gained a settlement at *Newton*, by virtue of his hiring to and service with *Ellerbeck*; and adjudged accordingly, that his last legal settlement was at *Newton*; and confirmed the order of the two justices. On *Saturday* the 17th of *May* last, a motion was made, by Mr. *Fawkes*, to quash these orders: for that there was neither a hiring for a year, nor a service for a year. And they are, both of them, necessary: it has been several times so adjudged. Mr. *J. Page* said, so it had: yet, he was afraid, most of the hirings at statutes throughout *England* were of this kind. Rule to shew cause. Upon shewing cause (on *Wednesday* 11th *June*,) Mr. Justice *Probyn* observed that the case does not state any custom about these statute-fairs. But he had a notion that there had been cases where the custom and usage of the country had been stated, to hire from the statute-fair till *Martinmas* following; and that such hirings pursuant to the custom had been allowed of. But Mr. *Fawkes* alledged that there were cases which adjudged that if there was such a custom, it could not control the act of parliament; and he particularly named one, viz. *Rex v. inhabitants of South Cerney, Tr. 5 & 6 G. 2*, (See Sessions Cases, *Ed. 1750, vol. 1, pa. 174, No. 156.*) It was now adjourned. It came on again upon *Saturday* 21st of *June*; when an objection was made to the *certiorari*, by Mr. *Denison*, of counsel for the township of *Goldesborough*, that it did not appear to be properly returned: the return was only signed *R. Whitton*; not saying who or what he was; or that he had any proper authority to return it. It is not even prefaced to be the answer of such a one: (which is the usual method.) Mr. Justice *Probyn*.—It ought to be returned by the persons to whom it is directed: and it is directed to the justices of the peace. Lord Chief-justice *Lee* directed other returns to be looked into: which appeared to run thus—“The answer of *A. B.* and *C. D.* two of the justices within named;” and then told the counsel who were for quashing the orders, they had better look into it, and see if they could support it. It was therefore again adjourned. But finding it could not be supported, they (on *Wednesday* 25th of *June*) moved to quash their own *certiorari*: which was granted. On the first day of this term, they moved for a new one. But this was opposed. For note—On the 24th of *June* last, the new act* concerning *certioraries* to remove orders of justices, &c. took place: which limits them to be moved for within six calendar months; and directs six days notice in writing to be given to the justices. And notice had been here given, in the vacation, to two justices who were at the sessions: but none was given to the two justices who made

* 13 G. 2,
c. 18, sect. 5.

made the original order. Wherefore Mr. J. Chapple (to whom application for a new *certiorari* was made in the vacation) would only grant his *fiat* for a *certiorari* to remove the order of sessions: but he referred them to a motion in court, as to granting a new *certiorari* to remove the original order of the two justices. Note also—This application to the court was not within six months: but the original application to Mr. Justice Chapple was within the six months, (though upon the very last day of them.) Upon shewing cause, on Monday the 10th of this month, against this rule obtained on the first day of this term, the clause in the act † of the last session of parliament was insisted on by Mr. Denison; which makes two things previously necessary before the court issues a *certiorari*; viz. (1st,) That it be issued within six calendar months after the order is made: (for the clause is prohibitory that the court shall not otherwise grant it; and therefore there ought to be an affidavit that the order was made within six calendar months.) (2dly,) There must be six days notice given to the justices who made the order. The court thought this such a case as they ought to assist if they could. Here was a regular application to a judge within time, and with due notice, as to the order of sessions; and he has granted a *fiat* for a *certiorari* to return it. So that you are in possession already of a *fiat* as to the order of sessions. And when that order shall be before the court, we may find a method of having the original order before us, without a new *certiorari*, or without any infringement of the act. If the *certiorari* commands the justices to return the sessions order, *cum omnibus cum tangentibus*, we shall see what return they will make to it. Therefore you had better take out your *certiorari* upon the *fiat* you are already in possession of: and there don't seem to be any need of the new one which you now apply for. They accordingly did so. And on Wednesday the 19th of this month, (both orders being then returned up,) a motion was made by Sir John Strange, to quash them; and a rule granted, to shew cause why they should not be quashed. It was now moved, by Sir John Strange and Mr. Fawkes, to make this rule absolute: there was neither a hiring for a year, nor a service for a year, in *Newton*. Mr. Justice Page said he believed great numbers of servants were hired in many countries (and he was sure of it in his own) only from the statute-fair. Lord Chief-justice Lee said it could never be supported to be a settlement in *Newton*; as there was neither a hiring for a year nor a service for a year: and after having spoken to Mr. Justice Chapple and Wright—The court, without reading the orders, or Mr. Denison's attempting any argument against it, made the rule absolute for quashing both orders.

Two justices made an order for the removal of *Anne Stokes*, single woman, from *Chewstoke* to *Wrinton* otherwise *Wrington* (both in *Somersetshire*; and, upon appeal, the sessions confirmed that order. Case—The pauper, being legally settled in *Wrinton*, and being about thirteen years of age, went into *Chew Magna*, to the house of her aunt *Hannah Spears* and soon afterwards went into the parish of *Winford*, and worked with one *Nicholas*

Settlement not gained by hiring for a year, and service for 11 months. He had for some time before

been a weekly labourer. The weekly hiring or agreement, at the weekly wages of 1s. 6d. each week in the winter, and 2s. each week in the summer: and on the *Saturday* in each week, the said *N. W.* when he paid the pauper her wages for that week, said to the pauper that she should come the week following; which the said pauper accordingly did, and renewed the contract for the week ensuing, in the same method. That the pauper continued to work with the said *N. W.* in *Winsford* aforesaid, in the manner aforesaid, for the space of one year and a half: but during all that time constantly returned in the evening, and lodged at her aunt's in *Clew Magna* aforesaid, and also resided with her aunt there on *Sundays* during the said time. That on the last *Saturday* of the said service, the pauper covenanted to serve the said *N. W.* for a year, for the wages of 1l. 10s. and immediately entered into the said service, and continued therein, with the said *N. W.* in the said parish of *Winsford*, for eleven months next following; and then, upon some difference between her and her said master, they parted; and she was paid the full proportion of her said wages for the said eleven months. Whereupon the sessions being of opinion that the said pauper did not acquire a settlement by such service in *Winsford*, doth confirm the said order of the two justices. On *Saturday* 18th *June* last, a motion was made by Mr. Gapper to quash these orders; who urged that there was a good hiring for a year; and also a service for a year, within the statute of 8 & 9 *W.* 3, c. 30, sect. 4. He cited the case of *Rex v. the inhabitants of South Moulton in Suffolk*, in 1 Lord Raymond 426, *H. 10 W.* 3, where it was holden that a service for half a year, and then for another half year under a subsequent hiring for a whole year, is enough. And 2 Lord Rayn. 1511, *Rex v. inhabitants of Aynhoe, M.* 1 G. 2, S. P. resolved accordingly; viz. that the hiring and service need not be under the same contract*. Rule to shew cause. The counsel for the parish of *Winsford*, who now shewed cause, (Mr. Henley and Mr. Gould) admitted that the service need not be under one and the same hiring, as has been settled in the cases above cited: (though perhaps those cases were carried full far.) But they argued that this case differs much from those cases: for, under 8 & 9 *W.* 3, c. 30, sect. 4, there must be a service for a year. Now this is only a service for eleven months under an hiring for a year; though there was an employment for above a year and a half, if the hirings for a week are included. But a day-labourer might as well be settled, as this pauper, upon the same principles. The act requires a continuing and abiding in the service; and the very words themselves import it: service includes residence in the house or at the expence of the master. And the 5 *Eliz.* c. 4, sect. 12, considers persons hired weekly, as day-labourers only: and the third section of the same act prohibits the hiring or being hired for less than a year, to cloth-workers. Sir John Strange and Mr. Gapper, on behalf of *Wrinton*, cited many cases to prove how favourable the court had always been to settlements. And they said, it was not necessary that the servant should lie in the house or even in the parish where the master resides: it is the service that gains the settlement. To prove which,

* And see Lucas's Reports (10 Mod.) 287, S. P. record.

which, they cited the case of the *Oxford* stage-coachman; whose servant was settled at *Wycombe*, where his service was performed. Lord Chief-justice *Lee* said it had been now settled that a service for less than a year, under a hiring for a year, may be coupled to a prior service which was not under a hiring for a year; provided it be a continuance of the same service. But both he and Mr. Justice *Wright* said, their only doubt was, whether on these first hirings, the girl was to be considered as a hired servant within the acts; or whether she was to be considered as a weekly-labourer, precedent to the hiring of her for a year. But Mr. Justice *Denison* said he had no great difficulty: for he thought the court should not go an inch further than they did in the case of *Aynhoe*. This is a little girl hired to burl cloth: probably twenty such children were so hired. The hiring was for a week: she lay at home, and was at home on *Sundays*. This was certainly as a day-labourer; not as a servant in the family, and part of the family. The act of parliament plainly means a hired servant, who is part of the family, wherever he lies. I know this cloth-working business; and am therefore afraid of the consequences of extending these settlements too far. These clothworkers hire perhaps a hundred children, in different parts of the work: and it would be very inconvenient, if the hiring any of them for a year, after some time of service under a weekly hiring; and their subsequent service of perhaps only a single week under that yearly hiring should gain them a settlement. Mr. Justice *Foster* thought the cases had been carried full far enough already. He went through the course of the acts of parliament, and decanted upon them; and had no doubt but the first hiring ought to be *ejusdem generis* with the last. Now a hired servant is always under the government, discipline and controul of the master, even on *Sundays*. But this child was not at all in this master's service either on nights or on *Sundays*. The other judges concurring—(For Lord Chief-justice *Lee* and Mr. Justice *Wright* were satisfied by what Mr. Justice *Denison* had said—) *Per cur.* Both orders were affirmed.

Mr. *Wade* shewed cause against quashing an order of two justices made for the removal of *James Arnold*, *Anne* his wife, and *Elizabeth, Mary*, and *Anne*, their children, from *Saundbridge* to *Bishop's Hatfield*, (both in *Hertfordshire*;) and an order of sessions confirming it: both which orders Mr. *Yates* had moved to quash, as being founded upon a mistaken judgment. The state of the case was this—*James Arnold* was hired to one *Parsons*, a parishioner of *Saundbridge* at 5*l.* for one year, to wit, from *Michaelmas* 1752, to *Michaelmas* 1753; with liberty to let himself for the harvest-month, to any other person. That the said *James Arnold* served the said *Parsons* until the said harvest-month; and, a little before the said harvest, without the knowledge of the said *Parsons*, hired himself for the said harvest-month, to one *Thrale* of the same parish: but went, with the knowledge of the said *Parsons*; and worked with the said *Thrale* for the said harvest-month; and received wages for the said harvest-month. That in the said harvest-month, the said *Arnold* brewed for the said *Parsons*:
and

Settlement not gained by hiring for a year with liberty to be absent during the harvest-month. 2 Bur. Sett. Ca. 439. Hil. 31 Geo. 2. (Feb. 9, 1758) Rex v. inhabitants of Bishop's Hatfield.

and after the said harvest-month, *Arnold* served the said *Parsons* for the remainder of the year. And the said *Arnold* lodged in the said *Parson's* house, in the said parish of *Saundbridge*, during the whole year: and at the end of the same, the said *Arnold* received the said 5*l.* for his year's wages. Whereupon the sessions adjudge that the said *James Arnold*, under the said hiring and service with the said *Parsons*, in the said parish of *Saundbridge*, did not gain any settlement in the said parish of *Saundbridge*: and therefore they confirm the order of the two justices, and disallow the appeal. *Mr. Wade* argued that this was not a complete hiring for a year, and service for a year. To prove this, he cited 1 *Strange* 142, *Rex v. inhabitants of West Woodbay*—[between the parishes of *Coombe* and *West Woodbay*:] where a hiring from the *Thursday* after *Michaelmas*, till the next *Michaelmas*, was holden insufficient. 1 *Strange* 83, *Rex v. inhabitants of Houghton*—Several hirings, each for eleven months, were holden insufficient: and the court said it would be dangerous to depart from the words of the statute. 2 *Strange* 1022, between the parishes of *Seaford* and *Castlechurch*—Going away twelve days before the end of the year, prevents the gaining a settlement. He agreed that where there is a regular hiring for a year, the court will not be over rigid as to the service. 2 *Strange* 1232, —Between the parishes of *St. Peter* in *Sandwich* and *Goolaston* (*Goodnestone*) in *Kent* was so: there, the servant went to the herring-fishery, with his master's leave. 1 *Strange* 423, *Rex v. inhabitants of Islip*, were small absences; and after a complete and perfect hiring for a whole year. Now this is only a hiring for eleven months and a service for eleven months. *Mr. Yates contra*—The master was bound; though the servant was at liberty. The servant was not removable. He served his master, in some respects, even during this month. *Lord Mansfield*—It is, in effect, only a hiring for eleven months. And the harvest-month is the principal month of the year. It is safest, to keep to the statute. If we allow this, we shall not know where to stop. *Mr. Justice Denison* concurred. And he observed that tho' the construction had been, in many respects, favourable as to the service, yet they had been stricter as to the hiring: and if this was allowed to be a good hiring, it would tend to enervate the act, and let the construction quite loose. *Mr. Justice Foster* agreed, in both, with *Mr. Justice Denison*: and he mentioned some instances of the former; and particularly the case of *West Woodbay*, abovementioned. But this is only a hiring for eleven months. *Mr. Justice Wilmot* concurred—It does not turn upon the obligation the master was under; but upon the obligation the servant was under: and the servant was not obliged to serve the whole year. It is very clear that this is not a hiring within the act. *Per cur.* unanimously—Rule discharged: and both orders affirmed.

Settlement
not gained by
hiring and ser-
vice for two
years in two
different

Two justices removed *Francis Orton*, *Lucy* his wife, and *John* their son, from *Austrey* to *Grindon* (both in *Warwickshire*;) which order was quashed by an order of sessions, upon an appeal. The special case stated was this—The pauper *Francis Orton* being at that time a poor child about ten years of age, was in *April* 1744, legally bound apprentice, by the church-

churchwardens and overseers of the poor of the parish of *Grindon*, to *Samuel Lytball* of the said parish of *Grindon*, until he should attain his age of twenty-four years, pursuant to the statute of the 43d of *Elizabeth*: which indenture was duly approved of by two justices of the peace, pursuant to the directions of the said statute. The said pauper served and inhabited with his said master, in *Grindon*, under the said indenture, till *Michaelmas* 1754; at which time, the said *Lytball*, the master, in consideration of 40s. then paid him by the pauper, agreed to discharge the said pauper from his said apprenticeship: which receipt and discharge was indorsed and written by the master, on the back of the said indenture; which he then delivered up to his said apprentice. And the said pauper then left his master, and hired himself for a year, and served for a year, at the parish of *Higham*. Afterwards, viz. at *Michaelmas* 1755, he hired himself for a year to *Lilly*, in the parish of *Austrey* aforesaid, and served the said year in the said parish; and received his year's wages. The pauper is now (12th July 1757) upwards of 23 years of age: but hath not attained the age of 24 years. Upon this case, the sessions quash the order of two justices. And Mr. *Wheeler* had, (on 27th January last,) moved to quash this order of sessions and to affirm the original order. The objection to the sessions-order was that the master and the apprentice could not agree to part, nor could the master discharge such an apprentice as this lad was, without the consent of the parish-officers: and, consequently, he gained no settlement, by his being hired for a year and serving for a year, in *Higham* or in *Austrey*. Rule to shew cause. Mr. *Caldecott* and Mr. *Guest* now shewed cause. They thus answered the objection. 1st, The apprentice became *sui juris*, by this discharge. No interest at all remains in the parish-officers: their power is only a limited power. And a parish-child thus bound agreeable to 43 *Eliz.* is upon the same foot as if he had bound himself: and when of full age, is at liberty to consent to his own discharge, and thereby to put an end to the apprenticeship. 2dly, But if not, yet the service being by his master's leave and consent, it gains him a settlement in the place where it was performed: which was first, in *Higham*; and afterwards, in *Austrey*. First—The master alone has power to discharge the apprentice. 1 *Strange* 48, *Rex v. Barnes* is an authority to prove that the master may assign the apprentice, though bound out by the justices; (the apprentice consenting to it.) And the same reason holds for discharging him, as for assigning. Secondly—It is, at least, a leave and consent of the master to the apprentice's serving in this parish: and therefore the last 40 days service makes the settlement. This was the very case between the parishes of *St. George Hanover-Square* and *St. James's*, in 2 *Strange* 1001; where *Alice Wheeler*, a parish girl, being bound out, her master let her out for hire to a person in *Marybone*, where she resided above 40 days: and the court held her to be settled in *Marybone*. Mr. *Wheeler*, Mr. *Vernon*, and Mr. *Norton*, contra, argued for quashing the order of sessions; and in support and for affirmance of the order of two justices. The construction attempted by the other side, they said, would invalidate the act of 43 *Eliz.* c. 2, which gives power to bind such poor lads, till

The master of a parish apprentice, in consideration of 40s. agreed to discharge him: but the apprentice was not of age to consent to the discharge.
2 Bur. Sett. Ca. 441. Hil. 31 Geo 2, (Feb. 13 1758) *Rex v. inhabitants of Austrey.*

till 24 years of age. [See sect. 5th.] They alledged that the parish-officers, and even the public are interested in this. And such an apprentice can not be discharged without the consent of the parish-officers who bound him out. In 1 *Salk.* 381, *Domina Regina v. Gould*, the court allowed an indictment, for disobedience, in not receiving and providing for such an apprentice. And they also cited 20 G. 2, *B. R. Rex v. Trevelyan*: (but that point was not there determined.) The interest of the churchwardens and overseers is a remaining interest. 2dly, Here is no express consent by the master to this service. And therefore the last 40 days service shall not gain a settlement; for want of such consent. 2 Lord *Raym.* 1352, and 2 *Strange* 582, S. C. the case of the parish of *Buckington*: which is in point. Lord *Mansfield* asked whether the apprentice was of age, or under age, at the time of his consenting to the discharge: for the whole depends upon that. Mr. *Norton*—He was under age, at the time of his consenting to the discharge: as is evident, by comparing the dates stated; (which shew that he must have been about half a year under.) Lord *Mansfield*—Then there is nothing in it. If he was under age, his consent was quite out of the case; and is exactly upon the same foot, as if he had given no consent at all: for the consent of an infant-apprentice can signify nothing, nor be of any validity. 2d Point—Then if his consent is of no validity, and as nothing at all, his subsequent services, under the hirings stated in the order, can never be considered as performed by the master's * leave and consent; and so, as being a service of his master under the indenture: because this is no express and explicit leave and consent given by the master to the particular service; but was intended to be quite general, and is even founded in a mistaken apprehension that the apprentice could consent to his being discharged; which he, being an infant, was not capable of doing. And the † two other judges being of the same opinion, Per cur. — Order of sessions quashed: original order affirmed.

* See 2 Lord *Raym.* 1352, and 1 *Strange* 582, S. C. the case of *Buckington* parish.

† Mr. Justice *Joller* was absent.

Settlement not gained by hiring and service for two years, in two different places—the service was only to be eleven hours the six working days: the rest of the time the servant was his own master 2 *Bar. Sett.* Ca. 458, *East* 31 *Geo.* 2, (April 22, 1758.) *Rex v. inhabitants of Macclesfield.*

Mr. *Jates* shewed cause against quashing an order of sessions, and affirming the original order. Two justices removed *Joseph Bower*, an infant of eleven years of age, from *Macclesfield* to *Sutton* (both in *Cheshire*;) but the sessions, upon an appeal from this order, discharged it. The special case stated was this—The said pauper *Joseph Bower* was a bastard-child, born in *Sutton*, and maintained by the overseers of *Sutton*. When he was about the age of eight years, he was, without the knowledge or consent of the overseers of *Sutton*, hired to one *John Swain* of *Macclesfield*, to work in his silk-mill there, for the term of three years: at 6*d.* a week, for the first year; 9*d.* a week, for the second year; and 13*d.* a week, for the third year: and the said contract was made (as well with the consent and direction of the mother of the said pauper, as with his own free will,) by a person whom the mother employed for that purpose; she not being able to stir about, herself, or to do any thing towards maintaining the said pauper. The master, *John Swain*, was not to find the said pauper either diet or lodging: and the said service was to be only eleven hours in the six working days; and all the rest of the time, as well as on *Sundays*, the said

said pauper was at his own liberty and his own master. The pauper continued three years in the said service; but within that time, frequently absented himself from his work; sometimes, for a whole day or longer; and at other times, for several hours in the day; for all which defaults, deductions were made out of his wages, in proportion to the time lost: but there was never any new or other agreement made, save as aforesaid. That during the said whole three years, the said pauper lodged with his mother in *Macclesfield*, who received his wages: and the same not being sufficient to maintain him, and the mother being unable to work, the overseers of *Sutton* contributed 6d. a week, during the whole time, towards his maintenance. That about, or soon after the expiration of the said three years, the mother died: and the said pauper (being ill) required relief from the overseers of the poor of *Macclesfield*; who, thereupon, applied for the order to remove him from their township of *Macclesfield* to that of *Sutton*. The sessions declare their opinion, That this settlement is in the said borough and township of *Macclesfield*: and therefore they repeal and make void the said original order; and give 15s. 6d. costs, to the overseers of *Sutton*. The rule to shew cause why this order of sessions should not be quashed, was made so long before, as in *Hilary* term 30 G. 2, and had been enlarged for four terms successively. Cause was now shewn. Mr. *Norton*, who was for quashing this order of sessions, argued that the settlement was in *Sutton*, and not in *Macclesfield*: for that the facts stated could not be construed to amount to a hiring for a year and serving for a year, within the meaning or intention of the act of parliament. Mr. *Vates*, contra, argued that it was. See the statutes of 3 & 4 W. & M. c. 11, sect. 7; and 8 & 9 W. 3, c. 30, sect. 4; which give a settlement by being hired and serving for a year. He cited the case of *Rex v. White-chapel*, P. 11 G. 1, 1725; and *Rex v. inhabitants of King's Norton*, B. R. P. & Tr. 1740; and *Rex v. inhabitants of Wrinton alias Wrington*, M. 22 G. 2; B. R. The court held clearly with Mr. *Norton*. Lord *Mansfield* premised that there was no foundation, on this state of the case, to imagine that it could be a settlement upon the ground of an apprenticeship: the only question is, Whether these facts stated, amount to a settlement in *Macclesfield*, as a hiring for a year and service for a year. The pauper was an infant of only eight years of age, at the time of the hiring: therefore he was not bound by the agreement. Indeed he might have affirmed it; (for the contract of an infant is not absolutely void, but only voidable, at his * own election:) but the master could not oblige him to stand to it. Then as to the contract itself—It was only to serve 11 hours in the day, of the six working-days; but during all the rest of those days, and the whole *Sunday*, the servant was to be at his own liberty and his own master. It is in the nature of a contract from week to week; and it cannot, in this case, be construed to gain a settlement, unless it had been intended that it should: whereas it is plain that the parish of *Sutton* have not understood it in that light, as a contract to change the child's settlement; because they have contributed towards its maintenance during the whole 31 years. Upon the whole, therefore, this pauper's settlement

[* This doctrine was settled and established in the case of *Wolt v. Ward*, B. R. Mich. 1732. 6 G. 2.]

is clearly in *Sutton*. Mr. Justice *Foster* concurred. He said he could not distinguish this case from that of *Chevy-stoke*. A service sufficient to gain a settlement, must be such a state, during the whole time. Whereas this was not a servitude during all the time: for he was to be at his own liberty and his own master during the greatest part of every day, and every whole *Sunday*. Consequently, this person was not at all in a state of servitude, at those excepted times. And therefore this is not such a service as is intended by the act. Mr. Justice *Wilmot* also concurred. The servant's lodging in his mother's house, would have made no difference, he said; provided the hiring and service had been in all other respects good. But here, the infant was not bound. For an infant has power, either to avoid, or to confirm his contract: and so it was determined in the case of *Holt v. Ward, Trin. 1732, B. R.* Then, as to the contract itself—This is not such a hiring and service as will gain a settlement within the act of 3 & 4 *W. & M. c. 11, sect. 7*. For that act intends only such services, where the servant is under the command and control of the master, during the whole year: which this servant was not to be; but seems only to have been hired for the particular purpose of working in these silk-mills, at certain hours. He was not in a continued and abiding state of servitude, during the whole year: and therefore he did not gain a settlement in the borough and township of *Macclesfield*. Consequently, the sessions have determined wrong. Per cur. unanimously—Order of sessions quashed: original order affirmed.

Settlement not gained by hiring for a year, and service till within three weeks of the end of the year, and then with his own consent discharged; tho' the servant returned a fortnight after, and was hired for a year and served 6 months. 2 Bur. Sett. Ca. 461. East 31 Geo. 2. (May 11, 1758.) Rex v. inhabitants of Caverswall.

Mr. *Morton* shewed cause against quashing the following orders. Two justices removed *Samuel Brassington, Mary* his wife, and their five children, (naming them, and specifying their ages) from *Trentbam* to *Caverswall* (both in *Staffordshire*:) and their order was confirmed by the sessions. The special case stated was this—*Samuel Brassington*, the pauper, was hired for a year, and served a year in *Caverswall*. And afterwards was hired for a year, to *Edward Brassington* of *Trentbam*, at 5*l.* wages; and served him till within three weeks of the end of the year: when, on some disputes arising betwixt him and his master, he was, with his own consent, discharged from his service; and received all his wages except what was deducted for the three weeks. As soon as he left this his service, he went to *London*; and was absent about a fortnight. Upon his return, at Mrs. *Brassington's* request, (his master being then from home,) he went again into their service; and within a week after the expiration of the first year, his said master hired him again for another year; and he served him, in *Trentbam*, for about six months of that second year, and then left him. The sessions, being of opinion that, as the pauper had absolutely quitted his service, before the first year was expired, the subsequent service, under the second hiring, though with the same master, could not be taken in aid, so as to make up a year's service, and give a settlement, within the meaning and intention of the statute of 8 & 9 *W. 3*, confirmed the order of removal from *Trentbam* to *Caverswall*. This court was moved by Mr. *Gilbert* (on 10 *February* last) for a rule to shew cause, why these orders should not be quashed.

quashed: because here was, as he said, an undoubted regular hiring for a year: and the whole of the service, taken together, was for more than a year. And he cited 2 *Strange* 878, *Inter par.* of *Hanmer v. Ellesmere*: where it was adjudged that the service needs not be in the same identical year. 2 *Raym.* 1511, *Rex v. inhabitants of Aynhoe*, S. P. accord. *Rex v. inhabitants of Fifehead Magdalen*, M. 1737, 11 G. 2, B. R.: where the servant left his master's service, (leaving a shirt at his master's house;) then went to his father's house (in the same parish) before any discourse about a new contract: but in about one hour met his master, and made a new agreement for a year. This was adjudged to be a continuance of the former service. Mr. *Morton* and Mr. *Asbursft*, the counsel for the orders, upon shewing cause now, insisted that the sessions had determined right: for that the former service, under the first hiring, was at a total end. They stated the acts of 3 & 4 W. & M. c. 11, and 8 & 9 W. 3, c. 30. The case indeed of *Rex v. inhabitants of Aynhoe*, 2 *Ld. Raym.* 1511; and the case of *Brightwell and West-banning*, upon which that resolution was grounded, (though otherwise not in itself agreeable to Lord *Raymond's* own opinion,) they allowed, are authorities not to be shaken now; that a hiring for a year, and a service for a year, though not under the same hiring nor within the same year, shall be construed to gain a settlement. But then that must be an uninterrupted continuance in the same service. And accordingly that was the case of a continued uninterrupted service: but here, the contract was absolutely determined and dissolved. *Tr.* 1745, 18 & 19 G. 2, B. R. *Rex v. inhabitants of Goodnestone*, is rather an authority that this present settlement is bad: for there the court considered the man, as being all the time in the service of his master; (though he was, with his master's leave, gone to sea upon the herring fishery.) They also insisted that this could not possibly be esteemed a continuance in the same service, under the act of parliament: which the case of *Fifehead*, *Tr.* 9 G. 2, B. R. might very well be construed to be. Mr. *Norton* and Mr. *Gilbert*, the counsel on the other side—, for quashing these orders, cited the same case of *Goodnestone*, (*v. supra*), as a liberal construction in favour of settlements: where the servant had leave to go and did go to the herring-fishery, three weeks before the end of his year; yet the settlement was holden good. The gaining settlements has been always favoured: and natural birth-right and justice demand that the right of the subject should not be narrowed. And in those cases where subsequent hirings and services have been taken in aid, yet there has been a total end of the first contract, as well as there can be said to be in the present case. However, it is not necessary that the contract should continue uninterrupted during the whole time. The court have allowed them to be acquired under different contracts, under different services, in different parishes. And a temporary interruption or even dissolution of the contract will not vary the case: for in many of the adjudged cases, the first contract was even totally dissolved, as much as it can be pretended to be in the present case. This man was of credit enough, to be hired for a year: and that is the proper test, of his being a person likely or not likely to be chargeable. Nay, he is even of credit enough to be hired

* Note. The words of the order are "Went again into their service."

† 3 & 4 W. & M. c. 11, sect. 7.
‡ 8 & 9 W. 3. c. 30, sect. 4.

for a second year, after his first was expired: which makes it still stronger. And this service also is in itself sufficient to gain him a settlement. The wife received him again, &c. And the wife's act is the act of the husband; and besides, is ratified by him. And it appears that the servant * returned to his service, within the first year. To the cases cited in support of the orders—It was replied—that in the fishery-case, *Rex v. inhabitants of Goodnestone*—the man hired a deputy to serve for him: and that was adjudged to be a continuance in his master's service. Whereas here, his service was absolutely at an end. And the words of the act are, That he shall continue and abide in the same service during the space of one whole year. [V. 8 & 9 W. 3, c. 30, sect. 4.] Lord Mansfield said the determinations upon these poor laws ought to be according to plain common sense, and with the least subtlety possible. A hiring for a year was necessary by the former † act: a service for a year was added, by the ‡ latter. And where the master gives leave, it is a continuance in the same service: as in that case of the herring-fishery, where a man with his master's consent, hired one to serve for him. (V. 2 Str. 1232.) So where there has been both a hiring for a year, and a service for a year, (though the original hiring was for less than a year,) and the service continues; it has not been required that the hiring for the whole year should be strictly reckoned from the first moment of the service, but it shall be considered as sufficient, that there were both a hiring for a year and a service for a year. In the case of *Fifehead*, the service was, in my apprehension, (and so Lord Chief-justice Lee and the rest of the court also took it,) a continued service. But here was a chasm of a fortnight or three weeks. And the first contract was absolutely dissolved; and so continued for a fortnight or three weeks. Therefore this last service can not be connected with the former part of the year. For if a chasm of a fortnight or three weeks be not a discontinuance of the service, it will be hard to say what is. Therefore I hold that here was no settlement gained in *Trentbam*. Mr. Justice Denison—The true reason of the liberal constructions of services for a year has been because the same service continued: whereas this case is the very reverse; it being expressly stated that he was discharged. So that we cannot help taking it to be totally dissolved. Indeed in the case of *Aynhoe*, and in that of *Bightwell* and *West-banning*, the court (though indeed they were upon a construction somewhat strained too) determined them upon the foot of the service continuing; whereas this service was totally at an end. Therefore he concurred. Mr. Justice Foster—The case of *Fifehead* confirms the principle that the court now go upon. There they did not consider so small an interruption as one hour or thereabouts, as an entire dissolution of the contract. But here it is a total dissolution, and the two services can not be connected. Therefore he concurred; and upon the same principle, That it ought to be a continued uninterrupted service. Mr. Justice Wilmot concurred. The cases of hiring for less than a whole year, and service (under such hiring) for part of a year; and then a second hiring for a whole year, and service for part of it, is indeed within the words of the act; where the whole service together amounts to one whole year. But

here is both a dissolution of the contract, and also an end of the service; both, within the first year. Whereas in the cases cited, the service continued. The case of *Lisehead* was only, as Lord Chief-justice *Lee* expressed it, a hesitation of the boy, for an hour. Therefore it is plain that if Lord Chief-justice *Lee* had considered it as a dissolution of the contract and an end of the service, he would have held the settlement to be bad. And it is much the best way to determine these cases upon the poor laws, according to plain and common sense. For if once we go upon niceties of construction, we shall not know where to stop: for one nicety is made a foundation for another; and that other for a third; and so on, without end. Therefore he concurred entirely with the rest of the court; and upon the same principle, That it ought to be an uninterrupted continuance of the same service; or else, that the second service could never be connected with the former. Per cur. unanimously—Both orders affirmed.

Two justices made an order for the removal of *Thomas Death* and *Anne* his wife and several of their children (naming and describing them) from *Hitcham* to *Ringshall* (both in *Suffolk*.) Upon appeal to the sessions, they set aside the justice's order, stating the case specially. Case—The said *Thomas Death*, the father, and *Anne* his wife, having a legal settlement in *Ringshall*, afterwards, about 18 years ago, before the *Michaelmas* in that year, let himself for one year, to *William Death* his brother, who was a legal inhabitant of *Hitcham*, and exercised the trade of a carpenter in the said parish; and entered his said service at *Hitcham* aforesaid, and continued his said service for a year according to his said contract: but was, by his agreement with his brother, to receive no money by way of wages; but his brother was to teach him as much as he could, during the said year, of the trade of a carpenter; and his brother was to provide him meat, drink, washing and lodging during the said time; and the said *Thomas Death* was to do all his said brother's lawful business in his farming way, (the said *William*, his brother, occupying a small farm at *Hitcham* aforesaid;) and was employed by his said brother in his said business of a carpenter and his farming way, and in doing any other work that his said brother ordered him; and particularly, in the harvest-time, the said *William Death* having taken some corn to cut, of a neighbouring farmer, the said *William Death* ordered the said *Thomas Death* to cut it, which the said *Thomas Death* did; and the said *William* his master, took the money for cutting it. And it further appeared (to the sessions) that the said several children had not gained any settlement, separate or distinct from their said parents. Whereupon, the sessions were of opinion, that the said *Thomas Death* gained a legal settlement for himself and for his said wife and for their said several children, in the said parish of *Hitcham*, by reason of the facts above stated; and therefore allow the appeal, and set aside the order of two justices for removing them from *Hitcham* to *Ringshall*. In *Michaelmas* term last, Mr. *Norton* moved to quash this order of sessions: because, as the pauper was a married man with a family, he could not gain a settlement by a hiring and service; and this letting himself is nothing more than

Settlement not gained by hiring and service for a year, by a man who is married at the time of being hired. 2 Bur. Sett. Ca. 489 Hil. 33 Geo. 2. (Jan. 31, 1760) Rex v. inhabitants of Hitcham.

than a hiring for a year and a service for a year. Afterwards, Mr. *Morton* (who was for the parish of *Kingshall*) moved that the order of sessions might be sent down to be amended in the state of the facts. He produced an affidavit that the pauper was not, in fact, a married man at the time of his letting himself to his brother for a year; nor was his being a single man at that time, at all contested: but that the recital of his having a wife at that time was inserted by a mistake; and that it then appeared to the sessions, upon the evidence, that he was then a single man. Lord *Mansfield*—Otherwise, there is no question about the settlement: and I wondered at its being made one. A rule was made to shew cause why the order of sessions should not be sent back in order to be amended. Which rule was now made absolute, though very strenuously defended: for the court thought it likely to be a mistake, for two reasons. One of them was an observation of Mr. Justice *Denison's* That if he was not a single man at the time of his hiring himself, no question at all could have arisen at the sessions, about the rest of the case. The other reason to suspect that it was a mere mistake, was added by Mr. Justice *Foster*; namely, That the counsel concerned for the parish of *Hitcham* were so vehement in their opposition to its being stated agreeably to the real truth of the fact. The sessions thereupon re-examined the matter, and heard new evidence, which proved the said *Thomas Death* to have been a single man at the time of the hiring: and they amended their order accordingly.

Settlement by Marriage.

A woman, without consent of parent or guardian, married a minor; since the Marriage-act, no settlement is gained by such marriage. 2 Bur. Sett. Ca. 486 Mich. 33 Geo. 2 (Nov. 26, 1759) Rex v. inhabitants of Preston near Faversham.

Two justices removed *Edward Young* the younger, and *Rebecca* his wife, and *Mary* their child, from *Chilham* to *Preston* near *Faversham* (both in *Kent*;) and the sessions confirmed (in all points) the order of the two justices. The case, as stated to appear to the sessions, was, That the said *Edward Young* the younger, being legally settled in *Preston*, and not being then a widower, was on the 25th of *January* 1758, without the consent of his father, who was then living, married by licence in the parish church of *Tenham*, to *Rebecca Drury* (who was settled in the said parish of *Tenham*, and who is removed to *Preston* by the said order, as the wife of the said pauper,) the said *Edward Young* being then an infant of 20 years: and that afterwards, the said *Rebecca* was brought to bed, in the parish of *Chilham*, of the said *Mary*, removed by the order. Whereupon they adjudged and ordered That the said order so made by the two justices be, in all points, confirmed. Mr. *Lee*, who had moved, on *Thursday* the 22d of *November* 1759, to quash these orders, objected to that part of them which relates to the woman and child: for that the marriage was absolutely null and void, by the express words of the Marriage-act 26 G. 2, c. 33, *sect.* 11; as the pauper not being a widower, and being under age, was married by licence, without the consent of his father (who was then living.) Mr. *Knowler* was to have shewn cause now, against quashing them. But he owned that the words of the act were so strong that he could not get over them; (being That it shall be absolutely null and void to all intents and purposes whatsoever:)

soever :) unless, (he said,) the court shall think a declaratory sentence to be necessary. But Mr. *Robinson*, who was on the same side, entered into the defence of these orders, and cited 2 *Strange* 1066, between the parishes of St. Peter and St. Nicholas in *Ipswich*; to shew that the word "void" may be construed "voidable." He also cited the case of *Barber v. Dennis*, in 1 *Mod.* 69, and in 1 *Salk.* 68, where it was holden to be immaterial whether the apprentice *de facto* was legally so, or not. (And he observed that in 2 *Strange* 1067, the case of *Cucuden v. Leyland* is taken notice of, and distinguished from the case then before the court.) So, on 23 *H.* 6, c. 10, and 21 *H.* 8, mentioned in *Hob.* 166, in the case of *Winckcombe v. bishop of Winchester and Puleston*. So, on *Westm.* 2. So, on 8 *H.* 6, c. 10, concerning sheriffs bonds, (instanced in the same case in *Hobart*.) So, on 1 *Eliz.* c. 19, concerning college leases, (there also mentioned.) He urged, that it is highly unreasonable, that a virtuous young woman and her innocent children should be turned adrift, and be considered as a whore and bastards, without having any opportunity to contest so severe a judgment against them. Therefore this marriage ought to be avoided by a sentence in the ecclesiastical court; and not in a collateral method, by an *ex parte* order of justices made without hearing them or any person on their behalf. Mr. *Norton*, *contra*, was beginning to speak. But Lord *Mansfield* (conceiving the point to be clear, and commending Mr. *Knowler* for his candour in giving it up,) stopt him; and took the distinction between acts of parliament made against one of the parties, and for the benefit of another of the parties, (and where such other party has an election either to take benefit of it, or not;) and acts of parliament made against both. This is an act made against both: and the marriage is thereby expressly declared absolutely null and void to all intents and purposes whatsoever. So that it is not like the cases cited, nor like the cases on the statute of bigamy, 1 *Jac.* 1, c. 11, which was made only against one of the parties. The other judges concurred with his lordship: and they also observed that this act was made against both; and Mr Justice *Foster* added—Against the innocent children of both. And he said it would be against the spirit of the act to understand it otherwise than that the marriage shall be absolutely void. Wherefore, per cur.—The orders must be confirmed as to the man; but quashed as to the woman and child. Rule accordingly; viz.—Both orders quashed as to *Rebecca* and *Mary*; and affirmed as to *Edward*.

Two justices made an order for the removal of *Richard Burden* and *Mary* his wife and their four children, viz. *John*, *Elizabeth*, *Hannah* and *Mary*, from *Headcorn* to *Maidstone* (both in *Kent*). Upon appeal, the sessions confirmed the order as to *Richard Burden*; but quashed so much of it as relates to the settlement of the wife and children. The short substance of the special case was—That the parish of *Maidstone* had, on 20th *January* 1730, given a regular and proper certificate, which had been properly delivered to *Headcorn*, acknowledging the said *Richard Burden* and *Mary* his wife, [the maiden name was *Broomball*,] to be inhabitants legally settled in their town: but that, in fact, *Richard Burden* was, fifteen years before his intermarriage

A certificate—
man married
a second wife
during the life
of his first:
the parish who
gave this certificate
acknowledging
the second
wife, are not
only obliged
to maintain.

the first, but termarriage with her, (which was on 7th October 1736;) lawfully married also the second to one *Mary Lee*, who was living and appeared in court at the sessions; wife and their though he afterwards married *Mary Broomhall* (the person now removed as children by his wife) but that the churchwardens and overseers of *Maidstone*, at the him. 1 Bur. time of granting the certificate, believed the said *Mary Broomhall* to be his Sett. Ca. 253. lawful wife; not knowing, or having ever heard, that he had any other Trin. 19 wife. It was further stated, That the lawful wife, *Mary Lee* and three Geo. 2. (July 3, 1745.) children by her were, after the said certificate was given, removed to Rex v. inha- *Maidstone*, and maintained there. On Wednesday 19th June last, a motion bitants of was made, by Mr *Gundry*, to quash so much of this order of sessions as Headcorn. related to *Mary* the wife and the four children; and to affirm the original Stran. 1233. order. They said the parish of *Maidstone* were concluded and estopped, 2 Sess. Ca. No. 206, S. C. by their own certificate, from saying that *Mary Broomhall* was not this man's wife. A rule was made to shew cause; upon the authority of *Rex v. the inhabitants of New Windsor*, T. 4 G. 1. B. R. * and *Honiton* and St. *Mary Axe*, M. 9 Ann. B. R. † that the certificate is conclusive upon the 186. parish giving it. Upon shewing cause, yesterday, the counsel for *Maidstone* (Sir *John Strange*; Mr. *Thomas Robinson*, and Mr. *Oriway*) denied that 535. the parish of *Maidstone* were estopped; and cited some cases upon the doctrine of *Estoppels*, which they said were odious in law: (*Co. Litt.* 45 b. 47 b. 19 H. 6, 44. 1 Ro. Ab. 862, 863.) And the consequence of such an estoppel would be, that the parish of *Maidstone* would have two of this man's wives to maintain at the same time: which would be contrary to law and absurd. They argued that the parish of *Maidstone* was not concluded by their certificate, any further than from denying that he had a lawful wife named *Mary*. They did not controvert that *Mary Lee*, his lawful wife, and his three children by her, were settled in *Maidstone*; because the man was confessedly settled there: but they said it would be hard that they should be charged with his courtesan and the children by her too. The certificate only acknowledges that this man and *Mary* his wife are parishoners of *Maidstone*. But what reason is there to construe the certificate to mean another woman, who was not his lawful wife; when, in legal construction, the certificate imports to be applicable to *Mary* his lawful wife? the justices have determined *Mary Lee* to be the lawful wife: and she must, consequently, be the person meant by the certificate; and every body is estopped to say the contrary. Adjourned. And now the counsel for *Headcorn* (Mr. *Gundry* and Mr. *Filmer*) proceeded, in support of the motion. As to the doctrine of *Estoppels*—If any body is estopped, it is the parish of *Maidstone*. If there is an estoppel upon an estoppel, it sets all at large. And if so, it must be taken upon the state of the fact: and that is, That *Maidstone* did not know or had ever heard that the man had any other wife but *Mary Broomhall*. Therefore they are concluded by their own acknowledgment, from denying *Mary Broomhall* to be his wife. And it is conclusive against them, not only as to *Headcorn*, but as to all ‡ other parishes whatsoever. *Headcorn* received them on the faith of a certificate of facts which it was incumbent on the parish of *Maidstone* to have inquired into. They have acknowledged the man himself and also this *Mary* (*Mary*

* See Sir J. S.
186.
† See 2 Salk.
535.

‡ See 2 Salk.
535, accord.

(*Mary Broomhall*) to be their parishioners. Lord Chief-justice *Lee*—It appears sufficiently certain that *Mary Broomhall* was the woman certificated under the description of *Mary* his wife. And she was received under this certificate; and cohabited, and had children under it at *Headcorn*. *Maidstone*'s having received and provided for the true and lawful wife can make no difference: they were bound to that, by the husband's being their parishioner. But it must depend on the certificate only, whether *Maidstone* is bound to provide for the other woman and the children by her. Neither does the question turn upon the doctrine of *Esloppels*, considered at large and at common law; but on the certificate given under the act of parliament. This certificate is a most solemn acknowledgment by the parish who gave it, that the parties who are the subject of it are their legally-settled inhabitants: 'Tis a sort of an adjudication that they are so. And so it was holden in the case of * *Honiton* and *St. Mary-Axe*. And * 2 Salk. 535. when the persons certificated, or their children, become actually chargeable, the parish who gave the certificate are bound to receive them. In that case of *Honiton*, Judge *Powell* compared the certificate to an acknowledgment upon record. Now the parish of *Maidstone* have by this certificate expressly acknowledged *Mary Broomhall* to be their legal inhabitant; and the parish of *Headcorn* were thereupon bound to receive her. Therefore when she becomes chargeable, the parish of *Maidstone* are bound to provide for her and her children by *Burden*. And so was the determination in the case of *New Windsor* and *White Waltham*. The whole court agreed in opinion with the Lord Chief-justice. They said there was no difference between this case and that of *New Windsor*; except one that is not material, viz. that there, the man and woman never were married at all; but here, they were actually married, but not legally. In that case it was holden that *White Waltham* was not at liberty, contrary to their own certificate, to controvert the certificated persons (*Pizzey* and *Anne*) being man and wife. Now here the certificate is in the same manner as that was. In the case of *Nympsfield* and *Woodchester*, M. 16 G. 2. B. R. *Nympsfield* having received a man and woman as man and wife, without appealing, it was holden that they were not at liberty afterwards to controvert the marriage of the father and mother, in a question about the settlement of the children. Indeed, the certificate was not there attempted to be controverted as to the man and woman; but only as to the children: but the settlement of the children being derivative, was holden to be in the parish which gave the certificate to the father and mother, as man and wife. In the present case, *Maidstone* say they were deceived: but it was their own fault or folly, if they were so; and they deceived *Headcorn*: therefore they ought to suffer, and not *Headcorn*. Wherefore, per cur.—Rule made absolute, to quash so much of the order of sessions, (which quashes the original order of the two justices) as relates to the said *Mary* the wife and four children; and to affirm the remaining part of the order of sessions; and to affirm the original order of the two justices.

Settlement by Office:

Settlement
not gained by
executing the
office of con-
stable; be-
cause he was
not presented
at the court-
leet; as the
custom had
been. 2 Bur.
Sett. Ca. 520.
Hil. 4 Geo. 3.
(Feb. 6, 1764)
Rex v. inha-
bitants of
Winterbourn.

Upon shewing cause why an order of sessions quashing an original order of two justices made for removing *William Merrick*, with *Mary*, *William*, *John*, *Anne*, *Betty*, *Hannah*, *Ruth*, and *Hester*, his children, from the parish of *Winterbourn* to the parish of *St. Philip and Jacob* (both in the county of *Gloucester*) should not be quashed; and why the original order should not be affirmed; the case, as stated upon the order of sessions, appeared to be, That *William Merrick*, the pauper, about thirteen years before the making the order, took a house in the parish of *St. Philip and Jacob*, for one year, at the rent of 12*l.* by the year; and dwelt in the said house for half a year, and paid the half year's rent. That at a court-leet of the lords of the manor of *Winterbourn* and *Hambrook* in the said county of *Gloucester* holden on the 13th day of *October* 1761, *Richard Bayly*, Esq. was presented by the leet-jury to be constable for the year ensuing, for the tithing of *Hambrook* in the said parish of *Winterbourn*, in respect of his estate in the said tithing; but was never sworn into or took upon him the said office. That the said *Richard Bayly*, having notice of the said appointment, procured the pauper to serve the said office of constable, in his stead, in order to gain the pauper a settlement at *Winterbourn*. That the pauper was accordingly sworn into the said office, before a justice of peace of and for the said county, and served the same office for the whole year; during which time, he lived in the said tithing of *Hambrook*; but never was presented thereto at any court-leet, as constable in his own right. That the custom has been, time out of mind, to present all constables to serve for the said tithing, at the said manor court-leet. By 3 & 4 *W. & M. c. 11, sect. 6*. If any person who shall come to inhabit in any town or parish, shall, for himself and on his own account, execute any public annual office or charge in the said town or parish, during one whole year, he shall have a legal settlement in the same, though no such notice in writing be delivered and published as the act before required. *Mr. Selwin* and *Mr. Vernon* had obtained the rule in *Michaelmas* term last. *Mr. Morton* and *Mr. Vernon*, on behalf of the parish of *St. Philip and Jacob*, and in support of the order of sessions, insisted that though the pauper acted as a substitute for *Mr. Bayly*, yet as *Mr. Bayly* was never sworn in to the office, but the pauper was, he therefore served the office in his own right, or at least for himself and upon his own account: and it is not at all like serving the office as deputy only to another; which was the case in contemplation of the legislature. But per cur — The case expressly states, That he never was presented to the office at any court-leet, as constable in his own right: and that the custom requires all constables to serve for the said tithing to be so presented. Therefore, (without hearing the other side,) order of sessions discharged: and the original order affirmed.

Settlement by renting 10 l. a Year.

Two justices removed *John Farnsworth*, his wife, and three children, with *Mary Hollingsworth* his apprentice girl, from *Kirton* to *Weston* (both in *Nottinghamshire*;) and the sessions, upon appeal, confirmed the said order of removal. Case—*John Farnsworth* was settled at *Weston*; and afterwards took a farm of 10 l. *per annum* for one year at *Kirton*, which had been let at that rent for five or six years then last past; but before that time was let at 7 l. a year only. He also took a by-tack of 20 s. a year, at *Kirton*, for one year: and he and his family continued there, upon the said tenements, ten months. When he first took and entered on these tenements, he was not of ability to stock them; having only two cows, two pigs and one horse; all which was not sufficient stock for such tacks: but he had household furniture, copper, brewing vessels, and other utensils for brewing ale to sell; and had a licence for that purpose. Before his entry to the 10 l. a year farm, he was told by the former tenant that such tack was too dear at 10 l. a year. To which he answered, “That he did not regard the dearness; for as it was 10 l. a year, it would gain him a settlement, and put an end to a dispute there was between two towns about his settlement:” but desired such former tenant to take no notice thereof, to any body. The sessions being of opinion that the said *J. F.* did not by virtue of such renting and inhabitancy under the circumstances aforesaid, gain a settlement in the said parish of *Kirton*, therefore confirm the order of removal. A motion had been made by *Mr. Heron*, on the first day of this term, to quash these orders: for that it is a plain settlement gained by *John Farnsworth* in *Kirton*; as it is stated that he took a tenement of 10 l. a year there, for a year, and resided upon it ten months. It is not stated to be under that value: and as no fraud is expressly adjudged, none can be presumed by this court. Rule to shew cause. Upon shewing cause why these orders should not be quashed, it was said that here is enough to occasion a suspicion of a fraud: and it appears upon the state of the facts, that it was under the value of 10 l. a year. Lord Chief-justice *Lee*—The consideration of this court must be, whether the sessions have stated a case that justifies the removal of this man and his family from *Kirton*, by shewing that the tenement he rented in *Kirton* was under the value of 10 l. a year. We are not to determine the matter, upon the evidence given to the sessions; but upon facts stated and adjudications made by them. Here, they have stated circumstances: but they have not explicitly stated the real value; nor have they adjudged any fraud. The value of the man’s stock is not material: the value of the tenement is the point. The act requires the renting a tenement of the yearly value of ten pounds. They state “that he did take a tenement of 10 l. a year, for a year, at *Kirton*. Indeed they add that it had been let at 7 l. a year, formerly. But it might be then worth more, or might have been afterwards improved: it had, for five or six years, been let at ten pounds *per annum*. They likewise say his stock was not sufficient for

Settlement gained by renting a tenement of 10 l. per annum; the ability to stock the farm is not material. 1 Bur. Sett. Ca. 106, Trin. 14 & 15 Geo. 2, (June 17, 1741) *Rex v. inhabitants of Weston*. Stran. 1156, 2 Sess. Ca. No. 141, S.C.

10 l. a year. But the quantity or value of his stock does not alter the value of the tenement. And they also state a conversation between him and the former tenant, who told him it was too dear: to which he answered "that as it was 10 l. a year it would gain him a settlement and put an end to a dispute about his settlement;" and desired the former tenant to take no notice of the matter to any body. Yet they do not adjudge that there was any fraud; nor do they state that it was under the value of 10 l. a year; and the evidence rather proves it to be of that value. They must expressly state "that it was fraudulent;" or else we cannot take it to be so. And we must take the case stated to be the whole case. He was therefore of opinion for quashing both orders. And the three other judges concurring, the rule for quashing both orders was made absolute.

Settlement
gained by
renting a te-
nement of 10 l.
a year; and
residing above
40 days in a
part of it
worth 40 s. a
year only;
and letting
the rest to un-
der-tenants.
He needs not
occupy the
whole. Mich.
7 Geo. 3,
(Nov. 26,
1766) Rex v.
inhabitants of
Llandverras.

Two justices made an order for the removal of *Evan, Elizabeth, Grace, Mary, and Thomas Hughes*, the children of *Evan Hughes* deceased, from *Llandverras* in the county of *Denbigh* to *Northop* in the county of *Flint*: and the sessions, upon an appeal, quashed that order. Case—In 1764, *Evan Hughes*, the father of the paupers, being settled in *Northop*, rented a tenement of 10 l. *per annum* value in the parish of *Llandverras*, and paid the rent to the landlord: he lived in a part of it, worth 40 s. a year only; and let the rest to under-tenants. *N. B.* This case was afterwards (see the note at the end of this case) more fully stated. It does not even appear by this state of it, how long *Evan Hughes* lived on the tenement. On the last day but one of *Trinity Term* 1766, Mr. *Kenyon* moved to quash this order of sessions, and to affirm the original order. The objection made to this order of sessions was, That upon this state of the case, he only occupied 40 s. a year. His being liable only to the rent did not gain him a settlement: he must occupy as well as take a tenement of ten pounds a year value; and he ought to occupy the whole 10 l. a year. Otherwise, nine different poor families might be introduced into a parish, upon one such taking. It would quite evade the act, if the mere taking of a tenement would do; for then one would gain a settlement by taking, and another by occupying the same tenement. A case was some time ago determined at *York*, where two people took a tenement of 17 l. a year, between them: but it was holden, "that no settlement was gained by either." In the case of *Rex v. inhabitants of Duns Tew*, a settlement was gained. That was 80 l. a year between two. It was determined upon the principle of half being a qualification for each; because it was above 10 l. a year. But it had been otherwise, if it had been under 10 l. a year. Mr. *Kenyon* and Mr. *Dunning* prayed, therefore, that this order of sessions might be quashed. Sir *Fletcher Norton* and Mr. *Morton*, *contra*, (for the parish of *Northop*.) Fraud cannot be intended: it must be found. This *Evan Hughes* took a tenement of the value of 10 l. a year; and was the tenant all the time. It was not necessary for him to occupy it himself. The act of 13 & 14 C. 2, c. 12, speaks of persons coming to settle in a tenement under the value of 10 l. a year: it does not require a person renting a tenement above that value, to occupy it; it is enough, if he rents

rents it, and resides forty days in the parish. Lord *Mansfield* was of this opinion. If it be a *bonâ fide* taking, he may underlet it as he pleases. If there should be any fraud or collusion, it might be found: but it is not to be presumed. Mr. Justice *Yates*—As to the case determined on the northern circuit, where two persons jointly rented only seventeen pounds a year—Neither of them alone might have credit to rent 10 l. a year. But this *Evan Hughes* had such credit: and that is the principle which the act goes upon. There must be a residence of forty days in the parish, in order for this man to gain a settlement: but he may let out part, if he thinks proper. Mr. Justice *Aston* concurred most clearly. He needs not reside upon any part of the tenement he takes: it is enough if he resides in the parish. He was extremely clear in the present case. And as to fraud—If there be fraud, it must be found so: we cannot intend it here. Ten pounds a year being stated as the value of the tenement, it has been held sufficient; though the man paid a rent that was somewhat less than 10 l. a year. This, I think, was in the case of *Rex v. inhabitants of Weston*. The under-tenants do not take a tenement of the yearly value of 10 l. Therefore they do not hereby gain a settlement. Mr. Justice *Hewitt* also concurred. The *certificate-act confirms this opinion: the* See 9 & 10 words are “unless he shall really and *bonâ fide* take a lease of a tenement W. 3, c. 11. of the yearly value of ten pounds.” The credit is the ground the act goes upon; a person’s having credit sufficient to hire a tenement of that value. And this man appears to have had such credit. By the act of 13 & 14 C. 2, c. 12, the coming to settle in a tenement of not less than 10 l. *per ann.* value gains a settlement, after forty days residence in the parish. Lord *Mansfield*—observed that this objection tends to narrow settlements; whereas they should rather be enlarged. *Per cur.* unanimously—Rule discharged: and order of sessions affirmed. Note—The case was imperfectly stated, upon the order of sessions: but the counsel for *Northrop* admitted that the man never occupied more than the 40 s. a year; having immediately let off 8 l. a year (the residue) to other persons. On the other hand, the counsel for *Llandverras* admitted that he resided above forty days upon the 40 s. *per ann.* part. And the parties agreed to a perfect state of the case. To which the court had no objection; provided it were managed so that it should appear that there was such an alteration made in the state of the case: otherwise, the opinion of the court would appear, upon the records of the court, to have been given upon a different case from that on which they should really give it. It was therefore agreed that it should be made part of the rule, That by consent of counsel it was admitted that *Evan Hughes*, father of the paupers, resided above forty days on part of the tenement; which part was of the yearly value of 40 s. only; and that he did, immediately after his taking the said tenement, let the rest and residue thereof to under-tenants, without residing thereupon at all himself.

Two justices made an order for the removal of *Richard Guffkyns* and Settlement *Mary* his wife, and *Richard, John, Samuel, Henry, Thomas, William*, gained by *James*, renting the

moiety of a
tenement, as
tenant at will,
where the
moiety ex-
ceeds 10l. a
year. 2 Bur.
Sett. Ca. 398.
Trin. 29 & 30
Geo. 2, (June
19, 1756)
Rex v. inha-
bitants of
Duns Tew.

James, Elizabeth, and Susannah, their children, from *Little Tew* to *Duns Tew*, (both in *Oxfordshire*;) and the sessions, upon appeal, confirmed that order. The special case stated the particular circumstances of a joint hiring of a farm of Mr. *Keck's* in *Little Tew*, of 52 l. *per annum*, by *Richard Guffkyns* and his father-in-law *Goodwin*. But a question was made by the counsel on the part of *Little Tew*, "whether *Guffkyns* was tenant of the farm at all;" or "whether it was not a taking by *Goodwin* only:" in which latter case, they insisted that *Guffkyns* could not have gained a settlement in *Little Tew*, as joint-tenant of a tenement of double the value of 10l. *per annum*; (which, if sufficiently stated, they agreed would have gained a settlement.) They urged, that it was plain that the sessions did not consider it to be a joint-taking by both, or indeed any taking by the pauper at all; because they have confirmed the order for removing him to *Duns Tew*, where he was before settled. So that this case seemed at first sight to be no question at law; but a mere dispute about the construction of the words which were used by the sessions in stating the fact of the special case; which fact the sessions had not explicitly found; but only stated the evidence produced before them, concerning it. However, the court afterwards entered into the law arising upon the facts stated. The case was thus stated—That *Richard Guffkyns*, the pauper, was born in *Sandford*; and afterwards, together with *John Goodwin* his father-in-law, rented a bargain at *Duns Tew*, at 81 l. a year, as partners; and lived there twelve years. That in 1747, they being about to leave *Duns Tew*, *John Goodwin* alone went to Mr. *Keck's* agent at *Little Tew*, and took a farm of 52 l. a year, for four years. That after such taking, and before the farm was entered upon, *Guffkyns* inquired of *Goodwin*, "Whether he depended upon his going with him to *Little Tew*:" to which *Goodwin* replied "that he did; for he could not go without him." That *Goodwin* and *Guffkyns* removed from *Duns Tew* to *Little Tew*, with their whole joint-stock to the value of more than 100 l. and managed the farm together, for seven years; both of them residing thereon. That Mr. *Keck* gave his receipts for rent to *Goodwin* only: and once, when Mr. *Keck* was obliged to distrain, the distress was made upon the stock which Mr. *Keck* supposed to be *Goodwin's* only; and *Goodwin* alone gave a bill of sale of the stock; and *Guffkyns* then stood by, without interpoling. That at the expiration of seven years, just before the order of removal was made, *Guffkyns* went off from the farm; and *Goodwin* took the whole stock, allowing *Guffkyns* 62 l. for his moiety thereof. It is therefore ordered by the court (of sessions) that the order of the two justices be confirmed. Lord Chief-justice *Ryder* chose to take time to consider this case; observing only, at present, that the words of the Statute of 13 & 14 C. 2, c. 12, *sect.* 1, are "coming to settle in any tenement under the yearly value of ten pounds." Mr. Justice *Denison* said—It had been determined over and over, that the real value of the tenement is the point to be considered; and not the mere rent, (which may be often much less than the value.) And the reason which has been always given for fixing the value, is the unlikelihood of a man's becoming chargeable, who is of so much credit as to be trusted with

with a tenement of 10*l.* a year value. However, he gave no opinion; being also willing to consider it. Mr. Justice *Foster* said he gave his opinion at large upon the case of a joint-taking of 14*l.* *per annum*; and he held that to gain no settlement to either; but he said he did not remember the particulars; for, he took notes of other people's opinions, but never took any memorandums or notes of his own. In the present case, the stock was joint, and there seems to be a joint-occupation: for managing jointly, with a joint-stock, is occupying jointly. And he said, he did not take it to turn only upon the credit given him by the landlord; but upon the credit given by the legislature to a man able to stock a farm of such a value: for the parliament did not consider such a man as within the intention of the act. The confinement to the actual taking a lease, is all by statutes subsequent to this act. However, he was content to consider it. Mr. Justice *Wilnot* thought that it appeared upon the whole state of the case, that the agreement between the two farmers was to occupy jointly: with a joint-stock. And he did not think the opinion of the landlord to be essential to this man's gaining a settlement: for a tenant may let the whole, or even subdivide it out to under-tenants, who may thereby gain a settlement, if the tenement be above 10*l.* a year. And where is the difference between the original tenant's letting out part, and his taking in a partner? We neither can presume, nor have here any reason to presume fraud or collusion. They went on beyond the four years, even as far as seven years, before *Guffkyns* went off from the farm and parted stocks. The value of the tenement is to be estimated according to the true and real value; not according to the mere rent: for there may have been a fine paid in hand; or there may be other agreements, reducing the annual rent. However, he was content to consider it. *Cur advis?* Mr. *Mercton* now moved for the opinion of the court: which Mr. Justice *Denison* delivered (the seat of the chief-justice being vacant:) and it was, that the order of two justices and the order of sessions confirming it, ought to be quashed. For, we are all of us of opinion, (he said) that *Guffkyns* gained a settlement in *Little Tew*, upon the state of this case: for we consider him, (being taken in partner by *Goodwin*,) as having an interest in the farm; at least, as a tenant at will to *Goodwin*, of the moiety of a farm worth 52*l.* *per annum* for the whole of it, and consequently his moiety above 10*l.* *per annum*. A tenancy at will is sufficient to gain a settlement. So it was determined in 1 Sir *J. S.* 502, between the parishes of *Cranly* and *St. Mary, Guildford*, on 9 & 10 *W.* 3, c. 11. The reason of that case will govern this. For there a certificate-man agreed with the lessee of a mill, That he should occupy the mill and pay 12*l.* *per annum*: and there was no under-lease or assignment: but in pursuance of that agreement, the certificate-man occupied the mill two years together, and paid the rent. And it was holden, That if this was not an absolute lease for a year (as Mr. Justice *Eyre* said it was, the rent being reserved as the rent for a year;) yet it was undoubtedly a lease at will; which is sufficient to gain a settlement*. Therefore we are of opinion, that *Guffkyns* is within 13 & 14 *C.* 2: *I have a c. 12, and gained a settlement at *Little Tew*: and consequently we think MS. note of the this case: and

the whole
court appear
thereby to
have agreed
that as it was

the justices have mistaken the case: and therefore the order of two justices, and also the order of sessions confirming it must be quashed. Both orders quashed.

a lease at will, it gained a settlement.

Settlement
gained by
renting dif-
ferent tene-
ments in dif-
ferent parishes
amounting to
10l. a year;
the settlement
is in the pa-
rish where
the man re-
sides above 40
days. 1 Bur.
Sett. Ca. 44.
Trin. 8 & 9
Geo. 2. (June
12, 1735.)
Rex v. inha-
bitants of
Sandwich. 2
Sess. Ca. No.
166. S. C.

Two justices removed *Mary Paine* and her six children from *Studland* to *Sandwich*: and, upon an appeal, the sessions confirmed their order. On *Monday* 19th of last *May* a motion was made, by Mr. *Bingham* and Mr. *Gundry*, to quash these orders. The case stated by the order of sessions was, That *John Paine* deceased, the husband of the woman and father of the children, was born at *Corfe Castle*; and after he came of age, he rented a tenement of 15 l. a year in *Sandwich* for a year and upwards: and when his lease and time for which he took the said tenement were expired, he left the same and went into the parish of *Studland*, and took and rented a house within the said parish of *Studland* at the yearly rent of 30s. And after he had lived in the said house about two years, he took and rented a tenement or lands in *Langton* of the yearly value of 12 l. on which there was no house; and occupied it two years; and inhabited in and rented also, during all the time, the said house in *Studland*. And the sessions declare that the last settlement of the wife and children depends upon the settlement of the husband, upon the facts above stated in their order. In support of the motion, the case between the parishes of *North Nibley* and *Wotton Under Edge*, *M. 1 G. 1.* was cited; where it was determined that two tenements (though rented of different persons) made a settlement in the parish where the pauper lived. [*v. Foley's Poor Laws*, pa. 90.] They also cited the case of *South Sidenham v. Lamerton*, 3 *G. 1.* where it was holden that one entire tenement of the value of 10 l. a year gains a settlement in the parish where the house stands, though part of the lands lie in another parish. [See *Foley's Poor Laws*, pa. 93, and *Sessions Cases*, Ed. 1750, vol. 1, pa. 122. *Lucas* 388, and 1 *Sir John Strange* 57.] They likewise cited the case of *Rex v. the inhabitants of Hollibourne*, *M. 1729*, 3 *G. 2.* where the pauper rented a house and lands of 12 l. 10s. *per annum* value; whereof the house and lands to the value of 9 l. 10s. *per annum* lay in one parish, and 3 l. a year of the lands lay in another: and the settlement was adjudged to be in *Elsted*, where the house was. (See *Sessions Cases*, Ed. 1750, vol. 2, pa. 159.) So in *M. 10 Ann. regina v. the inhabitants of Sedgeborough*, the pauper inhabited a cottage in one parish, and land of 11 l. a year in another: and it was holden that he gained a settlement in *Sedgeborough*, where he inhabited the cottage. On the other side, in support of the orders, Mr. *Huffey* (afterwards serjeant *H.*) admitted that in the case of *Humbleton and Sedgeborough* it was resolved to be no settlement in the parish where the lands of 11 l. *per annum* lay; but doubted whether it went so far as to determine it to be a settlement in the other parish where the cottage was. (See *Cases of Settlement*, pa. 5, No. 8; and *Sessions Cases*, Ed. 1750, vol. 1, pa. 36, No. 38; and pa. 82, No. 75; S. C.) In the case of *South Sidenham and Lamerton*, the court made a distinction between two different contracts, and one entire contract: and they held

held that taking two distinct tenements in two different parishes would not gain a settlement in either, though both together should be of the value of 10*l.* *per annum*. That was one entire contract, and a lease of entire tenement lying in different parishes: and it was upon that ground that it was holden to gain a settlement. But here they are two different contracts, and two distinct tenements. The counsel for *Sandwich* (who had moved to quash these orders) replied—That the reason of a settlement's being gained by renting 10*l.* a year in value, turns upon the ability of the person to rent lands of such a value, and his being of credit enough to be intrusted with it. Lord *Hardwick*.—I took it that this matter had been very well settled, That whether the taking was distinct or entire, or in one parish or in two, it is the same thing. Indeed the words of the act are—Coming to settle as aforesaid in any tenement under the yearly value of 10*l.* But the intention of the act is, that if a person be of sufficient ability to occupy a farm or tenement of the value of 10*l.* a year, it shall exclude the presumption of his being likely to be chargeable to the parish. And this is the ground of these resolutions. And the court always encourage settlements in parishes where the pauper has spent his labour. Therefore I think these orders are ill. Mr. *J. Page* concurred.—A man is not a better man for renting one 10*l.* *per annum* than two fives: and he contributes to the poor, for the whole ten, somewhere or other. From the nature of the thing, and the reason of the cases, a man that is able to rent and does rent 10*l.* a year shall be settled in the parish where he lives. Mr. *J. Probyn*.—I remember it has been made a question whether two distinct tenements taken at different times, when neither of them alone amounted to 10*l.* a year in value, should make a settlement. But it has been settled since that it does. However, here the second taking is a taking of an entire tenement of above 10*l.* a year, on an entire contract with one person. And it has been long established, That where a person living in one parish rents an entire tenement of above 10*l.* a year in that or in any other parish, it gains him a settlement in the parish where he lives. Mr. *J. Lee*.—I think my brother *Probyn* has fully answered the objection as to the *entierty* of the tenements. So that this objection may be laid out of the case. And then the reason of the cases upon this head has constantly gone upon the sufficiency of a person able to rent a tenement of such a value. The act of parliament has not fixed it to be a tenement in the same parish. And the man's ability is the same, whether the contract be with one person or with more. This I take to be the constant determination upon cases of this sort. However, as the last taking was of an entire tenement of above the value of 10*l.* a year, it stands free from the objection raised by the counsel who argued for the orders, that this is not an entire contract. *Per cur.* Both orders quashed.

Two justices made an order for the removal of *Mary Gradidge* widow and *Mary* her daughter from the parish of *St. Maurice* to that of *St. Lawrence*, both in *Winchester*: and the sessions, upon an appeal, confirmed that order. The sessions-order stated the case thus —That *Mary Gradidge*,
 Settlement gained by different tenements in different parishes,
 the

amounting to the pauper, was married to one *Richard Gradidge*, lately deceased; by 10*l.* a year; whom she had a daughter *Mary Gradidge*, the other pauper mentioned in the settlement order. That one *Charles Goulding*, a parishioner in the parish of St. *Lawrence*, and paying to church and poor there, was subpoenaed and sworn where the man resides above on the part of the parish of St. *Maurice*. That the said *Charles Goulding* then 40 days. 2 refusing to be examined, it was objected, that he ought not to be compelled to give evidence which might tend to charge the parish. That the court 588. East. over-ruled the said objection. Whereupon, the said *Goulding* was examined 8 Geo. 3. ed; and proved, that the said pauper, *Richard Gradidge*, at *Michaelmas* (May 4, 1768.) 1764, being then unmarried and having no child or children, was hired Rex v. inhabitants of St. Lawrence in Winchester. by him for a year, and served till *Michaelmas* following. That no other evidence was given of the said hiring and service: nor has *Gradidge* done any other act, to gain a settlement in the parish of St. *Lawrence*. That the said *Richard Gradidge* rented a tenement of one *Henry Warne*, in the parish of *Hursley* in the county aforesaid, for a year from *Lady-day* 1766, at 3*l.* 10*s.* per annum; but resided therein five or six weeks only, and then quit- ted it. That the said *Richard Gradidge* tendered the key of the said tene- ment to the said *Henry Warne*: which he refused to accept. That *Gradidge* thereupon left it with a neighbour, before *Midsummer-day* then next, for the said *Warne* to take it when he thought proper. That on the said *Mid- summer-day*, *Gradidge* took a tenement in the parish of St. *Maurice* in the county aforesaid, at the rent of nine pounds a year; and on the same day entered into possession thereof, and resided thereon above 40 days, before the key of the said tenement in *Hursley* was received by the said *Warne*: that he did not receive it till the sixteenth of *August* following. That the said *Warne* let the same to one *John Thompson*, before *Michaelmas-day* 1766: and that *Thompson* was to enter into possession thereof on the said *Michael- mas-day*. The sessions were of opinion that the order of the two justices ought to be confirmed; and confirmed it accordingly. A motion having been made to quash these orders; and thereupon, a rule to shew cause. Mr. *Dunning*, solicitor general, Mr. *Impey*, and Mr. *Kerby*, now shewed cause why they should not be quashed. Two objections had been made to these orders; 1st, That the witness brought to prove the settlement in St. *Lawrence's* was incompetent; and his evidence ought not to have been taken: 2dly, That *Gradidge* had gained a subsequent settlement in St. *Maurice's*. To these two objections, they answered—1st, As to the competency of the witness to give this evidence—The objection made to it is new, and cannot have much weight. He did not give this evidence for his own parish, but against it: neither did he persist in refusing to give it. He was examined; and gave evidence against his own parish of St. *Lawrence*. 2dly, *Gradidge* gained no subsequent settlement in St. *Maurice's*. It is not obvious, upon what grounds it has been established that if a person hires a tenement in two different parishes, amounting to 10*l.* per annum in the whole, he shall gain a settlement in that of the two parishes in which he resides. But admitting that to be a settled point, yet still, in order to gain a settlement, he ought to be the joint-occupier of both tenements within the same period: whereas here, this *Richard Gradidge*

Gradidge did not occupy both jointly within the same period: for the first contract was dissolved, from *Midsummer* at least, if not sooner. The landlord took back the key, on the 16th of *August*: which relates back to the abandonment sometime before *Midsummer*. If so, the question is at an end: for the pauper did not become tenant of the other tenement, in *St. Maurice's*, till *Midsummer*. He had abandoned the tenement in *Hursley*, some time before he entered into and occupied that in *St. Maurice's*; which was only at *Midsummer*: and though he occupied this latter forty days before *Warne* accepted the key of the tenement in *Hursley*; yet the acceptance of the key on the 16th of *August* relates to the tenant's prior abandonment of that tenement five or six weeks after *Lady-day*. Here was no actual, visible occupation of both tenements at the same time. Consequently, the parish could have no notice of his occupying of a tenement of 10*l.* per annum. The construing this to gain a settlement in *St. Maurice's*, would evade the act: the very ground of this kind of settlement is its amounting to notice to the parish. But here was a want of notoriety. So that the ground fails in this case. It would be unreasonable that a man who rents one tenement in *Northumberland*, and another in *Cornwall*, should gain a settlement in the parish where he resides, which parish knows nothing of the former renting. And there may be many small tenements formerly hired in many different counties, or in places of public resort, at great distances from each other; which can scarce possibly, at least not at all probably, ever come to the knowledge of the parish where the pauper hires the second tenement. Therefore the order of the two justices and the order of sessions are both good, and ought to be affirmed. Sir *Fletcher Norton* and Mr. *Pescod*, contra, for the rule. Lord *Mansfield* stopped Sir *Fletcher*. He first took notice of the expence of this litigation; observing that there were three counsel on one side; two, on the other: and then he declared his opinion. 1st, As to the competency or incompetency of the witnesses—It was a scandalous thing, to make the objection. In cases of this kind, it is reasonable that the truth of the facts should be fairly inquired into: and this was a ready way to come at it. 2dly, As to the settlement by taking a tenement of 10*l.* a year—Here is a contract for a year in *Hursley* not dissolved; nor could it be dissolved: the landlord refused to accept the key: and he did not receive it at last, till the middle of *August*; which was subsequent to the hiring the second tenement. Mr. Justice *Tates*—As to the competency of the witnesses—His evidence was against his interest; not for it. 2dly, As to the settlement—It is clear that he held both tenements together. The former contract was not at an end: the landlord might have brought his action for the rent. Mr. Justice *Aston* and Mr. Justice *Willes* were of the same opinion “that the former contract was not dissolved.” *Per cur.* unanimously—Both orders quashed.

Two justices removed *Thomas Lymer*, labourer, and *Anne* his wife from Settlement the parish of *Gratwich* to *Shenston*, both in the county of *Stafford*: and the sessions confirmed this order. The special case, as agreed by the court, gained by renting land from Candle-
and

mas to Michaelmas, and paying 11*l.* for it, with forty days residence. It needs not be a taking for a whole year.
2 Bur. Sett. Ca. 474, East. 32 Geo. 2, (May 9. 1759) Rex v. inhabitants of Shenston.

and counsel at sessions, was this—That the pauper *Thomas Lymer* having gained a settlement at *Shenston*, by a year's hiring and service, afterwards, to wit about fifteen years ago, took a house in the parish of *Gratwich*, at thirty shillings a year, which he has enjoyed ever since, till removed by this order; and, five years ago, took two acres of land in the parish of *King's Bromley* in the county of *Stafford*, for the growing of potatoes, from *Candlemas* to *Michaelmas*, for nine pounds; and at the same time, and from the same person took, in the said parish of *King's Bromley*, half an acre of land, at forty shillings, for the like term; and paid his rent for all the premises, which were of the value aforesaid. The pauper entered upon and enjoyed the lands during the term: and, the latter part of the time of his enjoying the same, to wit, between *Midsummer* and *Michaelmas*, he lodged above forty days in the parish of *King's Bromley*, where the lands lay, for the convenience of digging up and disposing of the potatoes. Mr. *Aston*, who moved, on *Thursday* 1st *February* 1759, to quash these orders, observed that the act of 13 & 14 C. 2, c. 12, does not require a taking for a year: which the justices seem to have thought necessary. The words of the act (13 & 14 C. 2, c. 12, sect. 1,) are “that upon complaint, &c. to any justice of peace, within forty days after any such person or persons coming so to settle as aforesaid, in any tenement under the yearly value of ten pounds, it shall be lawful for any two justices, &c. to remove, &c.” Rule to shew cause. Mr. *Morton* and Mr. *Leigh* shewed cause against quashing these orders. This question depends on 13 & 14 C. 2, c. 12. It is agreed that the pauper was originally and indisputably settled at *Shenston*. Therefore if he has not legally gained a new settlement, either at *Gratwich* or at *King's Bromley*, he is still legally settled in *Shenston*. But the taking in *Gratwich* was only 30*s.* a year; and there was not an occupation for a year, of a tenement taken for a year, in *King's Bromley*; both of the tenements in *King's Bromley* having been taken only for eight months. Therefore he had not gained a new settlement in either of those places. *Norih Nibley v. Wotton Under-edge* is the case, that they will rely upon. It is in cases of settlements, pa. 66, case 86. *Foley* 90, 91, and in vol. 1, of Sessions Cases, pa. 80, case 73. By the case of *Rex v. inhabitants of Sandwich*, P. 8, and Tr. 8 & 9 G. 2, B. R.—No residence is requisite upon the tenement of the greater value: where the 10*l.* per annum arises from two takings (of 10*l.* value together;) in two different parishes: in such case, the man is settled where he resides, if he resides in either of them. But it ought to be a taking for a year: which this is not. Therefore it gains no settlement. This land was hired for a particular purpose, for a potatoe-ground: where no stock is requisite. And the residence in *King's Bromley* was for the mere purpose of looking after the potatoes. Therefore it is not within the intent of the act of parliament. Mr. *Aston* and Mr. *Norton*, contra, admitted that the question depended on 13 & 14 C. 2, c. 12: but insisted that if the pauper had gained a subsequent settlement, either in *Gratwich* or in *King's Bromley*, the removal to *Shenston* was wrong; and that here was a clear settlement gained in *King's Bromley*, or in *Gratwich*. The being trusted with a taking of 10*l.*

per annum shews the person not to be within the meaning and description of 13 & 14 C. 2, c. 12. The case of *Sandwich* was a tenement of 10 l. *per annum* lying in two different parishes; and the court went upon the ability of the man to rent above 10 l. *per annum*; which excludes any presumption or likelihood of becoming chargeable. And lord Hardwicke * He did say said "that that was the ground of these resolutions." The case of *North lo. Nibley, M. 1 G. 1, B. R.* is in point. It was a taking for less than a year; and the value, (not the tenure) was principally respected. Therefore though the tenure was here for less than a year, yet the value being above 10 l. *per annum*, the man was not within the purview of the act of 13 & 14 C. 2, c. 12. The case of *Minchinghampton v. Bisley*, mentioned in 2 *Strange* 874, Tr. 4 G. 2, B. R. turned upon its being only the †† The words in that case were "and the pasture of a piece of land, from All Saints day, till Candlemas." The yearly value of it was 6 l. per annum; and the man was to pay 12 s. for it. pasture of the land, or being pasture ground. Here, the pauper has taken twelve pounds ten, in all. He has gained a settlement either in *Gratwich* or in *King's Bromley*: it is immaterial to us, in which it is. The act of 13 & 14 C. 2, only means to prevent vagrancy in such poor persons as are unable to rent 10 l. *per annum*. This is the clear intent of the statute. And these statutes have been liberally construed, in favour of settlements: and the court have always regarded the ability of the person to rent 10 l. *per annum*, as the ground of their determinations. Now the whole of this is of much greater value than 10 l. *per annum*. The justices usually consider this taking of potatoe grounds for the whole profitable part of the year, as a taking for a year. There is a case in 2 *Strange* 502, between the parishes of *Cranley* and *Sr. Mary Guilford*, which proves that upon the certificate act of 8 & 9 W. 3, c. 11, (where the words are, "unless he or they shall really and *bonâ fide* take a lease of a tenement of the yearly value of ten pounds,") a taking at will, by a certificate-man, is sufficient to satisfy that act. Much more shall a taking for nine months, (the whole profitable season,) satisfy the 13 & 14 C. 2. And here is no fraud, or possibility of fraud. Lord Mansfield asked Mr. *Morton* if he had any case to prove that a taking for a year has been holden necessary. Mr. *Morton* owned, he had not. Lord Mansfield—The first matter, about the residence in the parish, is out of the case: for Mr. *Morton* agrees that if the taking be sufficient, it would be a settlement in the parish where the man resided. It stands therefore tingly upon the question, "whether this man's taking above 10 l. a year in the manner stated, is a settlement." And there has been no determination that it is necessary that there should be a taking for a year. This act of 13 & 14 C. 2, c. 12, and the certificate act of 8 & 9 W. 3, c. 11, ought to be considered together, being in *pari materia*. There being no determination to the contrary, I have no doubt but that this is a settlement, upon the facts here stated. This man has done that which the act of 13 & 14 C. 2, has made the criterion of his substance. The taking one tenement of 10 l. *per annum* or more tenements amounting together to that value, in the same parish, or in different parishes, in the manner here stated, is sufficient to prevent him from being considered as a vagrant. And here is no fraud stated; nor is there any suspicion of fraud. If there was any fraud.

fraud in the taking, that would make a different case. But here, the man has *bonâ fide* taken ground of the yearly value of 12*l.* 10*s.* if we are to judge by computing the proportional rent: and in the nature of this species of culture, it is a taking for the whole year's profits of the land. In some other cultures besides this, (as woad, rape, &c.) it requires only a part of the year, to get the crop: and it is stronger, where the rent for part of the year only is above 10*l.* than where the 10*l.* is payable for the whole year. Mr. Justice *Denison* concurred. The reason why there has been no determined case upon the duration of the tenure, is because the act does not mention any such thing as a taking for a year, or for any particular time. The act goes upon the credit of the person and his ability to rent 10*l.* *per annum*. Such a man was not considered by the legislature as a vagrant, or as likely to become chargeable to the parish. And the nature of this land makes the present case stronger. I think there is no necessity to require a taking for a whole year. It is like the case of a taking at will satisfying the certificate act: where the words are the same, "the yearly value of ten pounds." The residence of forty days upon this taking, gains the settlement. Mr. Justice *Foster*—It is agreed by the counsel for the orders, that residence upon the tenement of the greater value is not necessary. Then, taking that for granted; I have no doubt that this is a *bonâ fide* renting a tenement of 10*l.* *per annum* value. Potatoe-grounds, (as every gardiner knows,) produce their whole profit in one particular part or season of the year; and no profit at all in the remaining part of it. Therefore this is in effect, and as to this particular culture, much the same thing as taking such ground to be so made use of, for the whole year. Mr. Justice *Wilmot* concurred. The former point, which Mr. *Morton* very candidly and rightly gave up, being settled, "that the residence upon a part of the different takings is sufficient to gain the man a settlement in the parish where he resides," I have no doubt as to the other, that the taking here stated is sufficient to answer the meaning and intention of the legislature in 13 & 14 C. 2, c. 12, for it turns upon the credit and ability of the person, who is capable of hiring and is judged proper to be trusted with a taking of the yearly value of ten pounds. But neither the act of parliament, nor any determination upon it, have said "that it must be a taking for a whole year." And if it were to be esteemed necessary to take such a tenement for a whole year, it might be attended with great inconveniences: in so much that a man might be removed from a house even of 100*l.* *per annum* value, which he should take only for half a year. And the case of a lease at will under the certificate act of 8 & 9 W. 3, c. 11, is very like the present case: for the words of both acts are almost exactly the same. I hold it to be clear, upon this act of parliament, that it needs not be a taking for a whole year. *Per cur*, unanimously—Rule made absolute for quashing both orders. Both orders quashed.

Settlement
not gained by
renting a te-

On *Tuesday* 27th of *November* last, a motion was made to quash an order of sessions which vacated an order of two justices for the removal of

James

James Hayes, *Elizabeth* his wife, and *Meadow*, *James*, *Thomas*, and *Elizabeth*, their children, from *Southwold* to *Voxford*. The order of sessions was thus—The inhabitants of the parish of *Voxford* in this county moving this court, by way of appeal, to be relieved against an order made by *T. C. esq.* and *T. N. gent.* two of his said majesty's justices of peace for the corporation of *Southwold* aforesaid in the said county, for the removal of *James Hayes*, *Elizabeth* his wife, and *Meadow*, *James*, *Thomas* and *Elizabeth*, their children, from the parish of *Southwold* aforesaid to the parish of *Voxford* aforesaid as the place of their last legal settlement: upon hearing counsel on either side, this court doth discharge the order made for removal of the said *James Hayes*, his wife and family as aforesaid; reserving, in the mean time, liberty to the parish of *Southwold* to draw up a special order, till the next session, to be settled by counsel on both sides and the justices present. And this is agreed and consented to, by the counsel on both sides. And in the mean time, the pauper, his wife and family are to remain in the parish of *Southwold* aforesaid. And it appearing to this court, that after the said *James Hayes* had gained a legal settlement at the parish of *Voxford* aforesaid, he hired a house in *Southwold*, by agreement in writing in the words following, to wit—“Memorandum of an agreement between *John Block* of *Hinton* of the one part, and *James Hayes* of *Voxford* on the other part, witnesseth, that *John Block* aforesaid doth let unto *James Hayes* all the house belonging to him being in *Southwold* in the county of *Suffolk*, at the yearly rent of 10*l.* with all the land thereunto belonging. The said *John Block* is to build a stable convenient for the house, also a ladeing for washing, and to sink a cellar, and to put up a stove-chimney in the little room. All this to be done between this and *Michaelmas* next. The said *Block* is to bring as many flags as will cover the said lands, in order to make it a good convenient bowling-ground. He, at the charge of bringing and groundage: and the said *James Hayes* at the cutting and laying. The said *J. H.* to have the house with the premises for three years, or five, as he shall think proper; and to come in at *Midsummer* next. The rent to be paid half-yearly; viz. 5*l.* at *Lady-day*; and the other half at *Michaelmas*: and all the rent to be cleared off at leaving of the premises. In witness whereof we have set our hands this 19th day of *June* 1738. The said *J. B.* to be at the charge of a handsome sign, and to get the house licensed: but the said *J. H.* to be at the charge of the licence. *John Block*, *James Hayes*. Witnesses, *Benjamin Curtis*, *John Petre*.” Which said house and premises before, and at the time of making the articles above recited, were never worth nor lett for above 6*l.* 10*s.* per annum: and none of the articles aforesaid were performed; by which the landlord might have made it worth 10*l.* a year. And the said *James Hayes* did not lodge one night in the house: but his wife and children lodged there five nights, and no longer; and his goods were in the said house above forty days, until they were taken and sold upon an execution. And that his wife and family continued in the said town, and kept the key of the house till *Michaelmas*. This court (the sessions) is of opinion, that by the hiring and facts aforesaid, the said

James

nement of 6*l.* 10*s.* per annum with a covenant to make it worth 10*l.* a year; but that covenant was not performed. 1 Bur Set. Ca. 140. Mich. 13 Geo. 2. (Feb. 11, 1739) Rex v. inhabitants of Southwold.

James Hayes did gain settlement in the parish of *Southwold* aforesaid; and doth accordingly discharge the said order. It was objected to this order of sessions—1st, That it don't appear when it was made. 2dly, That the sessions are wrong in their opinion: for, no settlement was gained in *Southwold*; as the tenement was not of ten pounds *per annum* value, nor did the pauper ever reside in it. Rule to shew cause. Upon shewing cause why this order of sessions should not be quashed, (on *Friday* the 25th of *January* last,) three exceptions were made to the original order of the two justices: *viz.* 1st, It does not appear how the man gained a settlement in *Oxford*. 2dly, The ages of the children are not stated. *M. 11 G. 1, Rex v. the inhabitants of Trinity in Chester.* 3dly, There is no oath of their likelihood to become chargeable. It is only upon complaint of the church-wardens and overseers; (not saying that it was founded on oath.) Lord Chief justice *Lee*—This order of sessions is returned in an unusual manner. It does not appear whether their adjudication was or was not made at the same sessions at which the liberty was reserved to the parish of *Southwold* to state a case: for no other court appears upon the face of the order to have been holden. But I think we may very well take this to be a state of the case then before them: and this court must determine upon the facts stated. The act of 13, 14 C. 2, c. 12, gives power to the justices to remove a person coming to settle in a tenement under 10*l.* a year value.—Now here the justices have expressly returned as a fact, that this tenement was only of the value of 6*l.* 13*s.* a year. Indeed they say that if the agreed improvement had been made, it might have been worth 10*l.* a year. But even that is merely conjectural: the fact returned is, “that it is only worth 6*l.* 10*s.*” As to the not stating the ages of the children—It is expressly adjudged to be the settlement of the children: therefore their ages are not necessary to be mentioned. As to the complaint not appearing to be upon oath—It is said upon due proof made thereof—We do adjudge, &c. which is enough. Mr. *J. Page* looked upon this state of the case as meant to be the true one; and said, he was clear, as to the merits, that the material thing was the value of the tenement, not the rent reserved; and he was as clear, that this was not a tenement of 10*l.* a year: for both at the time of the agreement, and also at the time of the removal, the value of it was but 6*l.* 10*s.* a year. And the mere covenant to build is not sufficient to bring it within the intent of the act. The other two judges, Mr. Justice *Probyn*, and Mr. Justice *Chapple*, concurred in the opinion, that this was not a tenement of 10*l.* a year value; and that the value must be estimated as at the time of the letting, or at least of the removal; and the mere covenant to make improvements which never were made, could not alter the case. The court therefore declared against the order of sessions, and would have quashed it. But the counsel for supporting it added a new exception to the original order of the two justices; *viz.* that in the margin of it was “town of *Southwold* in *Suffolk*,” (but not named to be a corporation;) and the justices are only named in the body of the order to be justices of the said corporation. The court thought this objection of weight: and, that they might determine

determine upon both orders together, they put it off for a few days. The answer now given to this objection, by the counsel for *Southwold*, was, that the court will take notice of corporation-justices, as well as county-justices; because it appears by 43 *Eliz.* that there are such justices as corporation-justices. The word *corporation*, in the body of the order, is the same as if it had been expressed *town corporate*: for if it was to be turned into *Latin*, it must be *dista villæ corporatæ*, and not *corporationis*, or *corporis corporati*. And the reason is because there is no such thing as a justice of a body corporate; but of a town-corporate, there is. And the court, in this case, will intend the town of *Southwold* and the corporation of *Southwold* to be the same. In the case of the king and messenger, 8 G. 1, B. R. the court held, that they ought to take notice of the Tower-liberty to be a distinct liberty, and out of the county at large; and that it had justices of its own. Lord Chief-justice *Lee*—Here it is in the margin of the order “town of *Southwold*,” and the order is made on complaint to two justices of the said corporation. The question therefore is, what is the true construction of the words “said corporation;” whether it may not mean “the said corporate town.” I think it may here be so understood. Mr. *J. Page* thought it would be too strict, if the court should refuse understanding the words “said corporation” to mean the said corporate town. Mr. *J. Probyn*—The question is, whether it be not a necessary intendment, that the town in the margin, and the corporation in the body of this order, are the same. “Said corporation,” if turned into *Latin*, would be “the said town-corporate.” I am inclined to think it will do. Mr. *J. Chapple* thought they imported the same thing: The word “said” ties it up to be the same. *Per cur.* Sessions order quashed: original order confirmed.

Upon *Saturday* the 15th of *June* last a motion was made by Mr. *Jen-* Settlement
nings, to quash an order of sessions confirming an order of two justices for not gained by
the removal of *Thomas Newport*, *Mary* his wife, and *Jane* and *George* their renting a tene-
two children, from *Barham* to *Marden*, both in *Kent*. The substance of ment of 16 l.
the special case (wherein many particular circumstances were stated) was, per annum
that the said *Thomas Newport* and one *Joseph Dives* jointly hired a house between two
and land at *Marden* for a year, at 16 l. per annum (which had been rented persons,
at twenty pounds) and jointly occupied the house and tilled the land for though it had
the said one year; and at their joint expence tilled and sowed the land; been let at
and jointly paid the rent, *i. e.* each the like sum. In support of this mo- 20 l. a year;
tion, a case was cited from a MS. note of a respectable gentleman taken since the half
at *Durham* assizes, 6th *August* 1733, between the inhabitants of *Croft* and does not a-
the inhabitants of *Gainford*:—which was a joint taking of 14 l. per annum, mount to 10 l.
each paying separately; the landlord not caring to let to either singly. a year. 1 Bur.
And the two judges, (*Reeve* and Lord Chief-justice *Eyre*) to whom it was Sett. Ca. 311,
referred, held it no settlement: because the statute requires the person's Mich. 25 Geo.
taking a tenement of 10 l. per annum value: whereas this practice of call- 2, (Nov. 23,
ing in a partner in the taking, would, if admitted equivalent to a sole 1751) Rex v.
taking, evade and frustrate the statute. Rule to shew cause. Mr. *Hume* inhabitants of
Vol. III. N°. XC. *Campbell* *Marden*.

Campbell, and *Mr. Knowler*, the counsel who now shewed cause, urged 1st, That each was liable for the whole rent. 2^{dly}, That the true rule to go by, is the value of the tenement; not the reserved rent: (which value is not here stated.) But even taking it as a tenement of sixteen pounds *per annum* value; yet the pauper was legally the tenant of the whole: both being liable to the landlord, for the rent. It is only taking a further security for payment of the rent: which shall not prevent gaining a settlement. In *Tr. 10 & 11 G. 2*, between the inhabitants of *Butley* and *Benball*, the tenement was 14 *l. per annum*: and the landlord took a security also for the rent: yet it was holden a good settlement. The very words of the statute of 13 & 14 *C. 2, c. 12*, express the case of a joint taking. For they are—"any person or persons coming to settle in a tenement under 10 *l. per annum* value." And this tenement has been let at sixteen or twenty pounds *per annum*. So that this is expressly within the words of that statute. Suppose the rent had been 20 *l. per annum* value;—no doubt it had gained a settlement to both. It may indeed be objected, that at this rate, twenty people might be settled in one tenement of 10 *l. per annum*. But such a transaction might be set aside and relieved against, under the head of fraud. On the other side, it was argued that this case certainly is not within the intention of the act: for, as to the plural word "persons," it must be understood *reddendo singula singulis*; and never could be meant to give a settlement to an indefinite number of people, for hiring one single tenement of 10 *l. per annum*. As to each being tenant of the whole—No execution could be levied upon the whole, for the debt of one only: nor could either charge or dispose of more than one moiety: and the same might be asserted of the stock upon the farm. So that the credit and ability of this man was only proportionable to the moiety of the taking. In the case of *Butley* and *Benball*,—where the landlord required and took a joint security; the tenant's visible credit was not thereby affected: he had the credit of the tenement, as to every body but the landlord; and stocked it; and used it. This case is quite otherwise. As to value—The having been once let at 20 *l.* proves nothing. The present rent, not the past, is the true test of the value of the tenement. This practice would evade the end and intention of the act of parliament, which meant that no one should thus gain a settlement, whose credit and ability were not equal to the hiring a tenement of the value of ten pounds *per annum*. Lord Chief-justice *Lee*—Upon this order, either the value of the tenement hired by the pauper is to be taken as under 20 *l.* (*viz.* 16 *l. per annum* only;) or else, no value of it is stated at all. Now taking it as a tenement of 16 *l. per annum* value in the whole, (for so I must take it;)—The meaning of the word "persons," in the act of parliament of 13 & 14 *C. 2, c. 12*, is only to include those persons who make part of the family of the inhabitant who is the renter or taker of the tenement; but can never mean to extend to an indefinite number of persons joining together, to rent it. Mr. Justice *Denison* thought it an exceeding plain case. The act of 13 & 14 *C. 2*, never intended that more than one person should gain a settlement, by renting a tenement of 10 *l., per annum* value.

And whatever may be the case, with regard to the remedy against the occupiers of such land so jointly taken by two persons; yet this act of parliament considers only the right: which, clearly, is only to half. Mr. Justice *Foster* held it to depend upon the real value of the right and interest in the land: which in this case is but half; and that half does not amount to the value of 10 l. *per annum*. They all agreed with the opinion of the judges upon the northern circuit, in the case of *Croft* and *Gainford*, "that this is not sufficient to make a settlement." That was this very case: and both those judges were very knowing in the affair of settlements. *Per cur.* unanimously—Both orders quashed.

Two justices made an order for the removal of *Martha Edwards* the widow of *Richard Edwards* deceased, and his five children, *Jane, William, Ann, Benjamin* and *Martha*, from *Lockerly* to *Shirefield English*, both in the county of *Southampton*: which order the sessions, on appeal, quashed upon the merits. Special case—The said *Richard Edwards*, his wife, and the said five children, were settled in *Shirefield English*; but afterwards removed into *Lockerly*, and there entered into articles of agreement with one *John Merish*, who then occupied a messuage farm and lands in *Lockerly*: which said articles are stated verbatim in the order of sessions, and are in substance as follows—1st, *Merish* covenants with *Edwards* (therein styled dairy-man) to let and demise to him, his executors, administrators, and assigns, and that they may peaceably possess and enjoy, a dairy consisting of sixteen cows, with the messuage or tenement and dwelling-house, and feeding for the said cows on twenty-one acres of clover ground, and thirteen acres of meadow land, with the after-leaze of a mead: all which are situate in *Lockerly*, and are part of *Canefield* farm in the occupation of the said *Merish*; together also with the run of the backside or yard belonging to the said messuage or tenement, and the arshes belonging to the said farm, for the feeding of pigs; and also the run of one horse, with the cows aforesaid; from the 2d of *February* next ensuing the date, for one year. Also that *Merish* shall, during the term, allow to *Edwards* all the sherl-wheat arising from the corn growing on the farm; and also provide for the use of the cattle (when wanted) five tons of hay; and for the same feed of the cattle, cause ten acres of the clover ground and thirteen acres of the meadow to be laid up at *Candlemas-day*, and the other eleven acres of the clover at *Lady-day*; and also put the messuage or tenement and dwelling-house and premises into repair; and fetch the goods, necessaries, and fuel of *Edwards* home to the said messuage or tenement and dwelling-house. And if the said cows shall not be delivered of their calves by the 1st of *May* following, *Merish* shall deduct and allow out of the rent reserved 2 s. *per week* for every cow not so delivered, until she shall be delivered; and also what may be reasonable, for every calf wanting to each cow. And lastly, *Edwards* covenants to pay *Merish*, for and in consideration of the premises, 3 l. 5 s. for every such cow as aforesaid delivered to his use and possession as aforesaid, payable quarterly; except as above-mentioned. That in pursuance thereof, *Edwards* entered on and occupied the said

Settlement not gained by renting a messuage, &c. and feeding for sixteen cows in a dairy; though he was to pay above 10 l. a year. This was no tenement: a tenement must lie in tenure, and relate to land. 2 Bur. Sett. Ca. 315, 10 l. 25 Geo. 2, (Feb. 10, 1752) Rex v. inhabitants of Lockerly.

dairy and premises, and lived in the said messuage or tenement and dwelling-house and premises, till his death; which happened about the 7th of *October*. And that the cows were fed in the lands mentioned in the articles: part whereof was also fed at some time in the said year, to wit, during the time the cows were foddered in the yards belonging to the premises, during some part of the said winter season, with the sheep of *Mersh*: but the thirteen acres of meadow were never fed but by the said cows. That after the death of *Edwards*, the said *Martha* his widow continued in the occupation of the premises, and held the same to the end of the year, pursuant to the articles. And that the said messuage or tenement and dwelling-house, distinct from the dairy and the rest of the premises in the said articles mentioned, were of the yearly value of twenty-five pounds and no more: and that the rest of the premises were of the annual value of 50 l. and upwards. And that neither the said *Richard Edwards*, nor the said *Martha* his wife, nor the said children, did any other act than as aforesaid, to gain a settlement. On *Saturday* the 25th of last month, a motion was made by Mr. *Hume Campbell*, to quash this order of sessions, and affirm the original order. It was urged, that the articles of agreement, and what happened in pursuance of them, was not sufficient to gain a settlement to the paupers in *Lockerly*. He said, the case between the inhabitants of *Minchin Hampton* and *Bisley*, *Tr. 3 & 4 G. 2, B. R.* is the nearest case to this. It went off upon another point*: but it was there holden “that the feeding of land did not gain a settlement.” Rule to shew cause. The counsel who now shewed cause, insisted that this was a tenement under the meaning and intention of 13 & 14 C. 2, c. 12, and they argued both from the preamble of the act; and also from the liberal construction that has been always made upon it, in favour of settlements. To prove that this statute has been liberally construed, they cited the case of *Rex v. the inhabitants of Sundriss*, where Lord *Hardwicke* gave it a liberal construction, in determining that a man could not be removed from his own, though a leasehold of small value. A tenement is every thing that is holden. 1 *Inst. 4, b. 6 & 19*: where profits *a prendre* are considered as tenements. And this is a profit *a prendre*, connected with an interest in the land. As to the case of *Minchin Hampton* and *Bisley*—It was never determined on † that point. Besides, the taking was only from ‡ *Michaelmas* to *Candlemas*. It was not, nor could be laid down “that taking the pasturage of land for a twelvemonth would not make a settlement.” Though this under-lessee has only the herbage, he may bring an action, or distrain. *Dyer 285, b.* the grantee or patentee of the king *de herbagio forestæ* may maintain a *clausum fregit*, or distrain cattle damage-feasant upon the land. Tithe is a tenement; though it be no ownership of the soil. If it be objected “that by this method, two settlements might be gained by virtue of the same premises; one, by the original tenant; the other, by such his lessee;—the answer is—So it may, provided the original tenant leaves himself above the value of 10 l. *per annum*. If a property is capable of being divided out, (as for instance, the orchard itself, and also the pasturage of an orchard) no doubt if the value

* It was for want of an adjudication. See this case in Sessions Cases, Edit. 1750, vol. 2, p. 92, No. 93, and p. 163, No. 132, and Sir John Strange, p. 874, extremely short. I have also a MS. note of it, taken myself. † My note of it says that the orders were quashed upon another exception.

‡ My note is —“And the same year took, in the said parish of *Bisley*, the pasture of a piece of land, from All Saints Day

of each lessee was 10 l. *per annum*, it would gain a settlement to each: for there is no sort of fraud in this. On the contrary, it was argued that this is not a lease of the land; but a mere contract for the milk of another man's cows. The possession even of the cows is not to be delivered to *Edwards*. And the recompence arises in proportion to the cows which shall calve. The rest of the agreement is only how the grantor shall feed his cows, in order to make the more or better milk; and about the running of the grantee's horse and pigs. So that this is nothing like the hiring of a dairy; or dairy-farm: nor is a profit a *prendre* out of lands. Renting the apples in an orchard for a year would not gain a settlement. Therefore this is not a tenement within the act of parliament: it is a profit from the cattle: not from the land.—N. B. All the counsel agreed it to be a new case, hitherto undetermined; and the only question to be “Whether this was a tenement within 13 & 14 C. 2, c. 12, *sect.* 1.” Lord Chief justice *Lee* was absent. Mr. Justice *Wright* took notice that the words “let and demise,” were indeed used; and so also was the word “dairy:” but the dairy is immediately after explained to mean sixteen cows. The land seems to have remained to *Merfb*: for he was to lay it up, at such a time. The only question is, “Whether this can be said to be a tenement, under 13 & 14 C. 2, c. 12.” Now a tenement must lie in tenure; and must relate to land. Whereas this contract relates to the cows. The pasture of the ground, generally, is not let; but only the feeding of sixteen cows: he could not feed other cattle upon it. The value of this meadow is not stated. It seems to me to be only an agreement for the use of the cows, and the feeding of them: and it is merely personal. Here is no interest in the land that passes, or was intended to pass. He thought it a very clear case. The case of *Minchin Hampton* was a different case; and was not determined upon the point of renting the pasture of the land; but quashed for want of an adjudication. (However, he said that * if that case was an agreement “for the pasture only of the land,” he should doubt of it.) Therefore the order of sessions ought to be quashed; and the original order confirmed. Mr. Justice *Denison* and Mr. Justice *Foster* (*Lee*, chief-justice, dissent) were clearly of opinion that this agreement was merely for a personal thing, the use of the cows; and has nothing to do with the land. Consequently it can never come within the intention of the word “tenement:” upon which a man is to be settled. *Per cur.* unanimously—Order of sessions quashed: original order affirmed.

took, in the said parish of Bisle, the pasture of a piece of land from All Saints Day till Candlemas following.”

Two justices removed *Isaac Wibberley* and *Mary* his wife, and *Isaac* his son, and *Mary* and *Elizabeth* his two daughters, from *Kniveton* to *Tiffington*, both in the county of *Derby*. On appeal, the sessions state this case—That *Isaac Wibberley*, being settled at *Tiffington*, did upon *Lady-day* 1749, take and enter upon a farm at *Kniveton*, of the yearly value of eight pounds, of Mr. *Hanson*, vicar of *Kniveton*, to hold from *Lady-day* 1749, to *Lady-day* for 31. 15s. Settlement not gained by renting a tenement of 8 l. per annum, and being a joint-tenant.

more, and to day 1750. And that also, at the same time, he, with one *Thomas Hill*, pay the joint- jointly took and entered upon another farm in the same liberty, of *Thomas tenant* 4s. *Daniel*, to hold from *Lady-day* 1749, to *Lady-day* 1750, of the yearly more for some privileges. value of 3l. 15s. And at the same time of taking the said farm of 3l. 15s. This 4s. can- it was agreed between the said *Isaac Wibberley* and *Thomas Hill*, that *Thomas not be con- Hill* should have and take one half of the corn and hay to be cut from the sidered as a said farm of 3l. 15s. rent; and that the said *Isaac Wibberley*, after that the rent. Then said *Thomas Hill* had taken and carried away his half part of the said corn 8l. added to and hay, should be possessed of and occupy the whole farm of 3l. 15s. rent, the half of 3l. and hay, till *Lady day* following; paying to the said *Thomas Hill* 4s. for the said 35s. is not Hill's share of the said farm. And that the said *Thomas Hill* did on or be- equal to 10l. fore the first day of *October*, 1749, take and carry away one half of the 2 Burr. Sett. said hay and corn; and that the said *Isaac Wibberley* did thereupon imme- Ca. 499. East. diately take and continue the possession of the whole farm, till *Lady-day* 33 Geo. 2. 1750; and paid the said 4s. to the said *Thomas Hill* for the same. All (May 9, 1760) which facts being stated specially to the court of sessions by the counsel on Rex v. inha- the behalf of the appellants, and consented unto by the counsel on the be- bitants of half of the defendants; and the court [of sessions] being equally divided in Kniveton. opinion; they allowed the case to be found as stated; in order that the appellants might take the opinion of the court of *King's Bench* at *Westminster*, and the matter be finally determined there. Mr. *Edward Wilmot*

* But, in fact, moved (on *Saturday* 23d *June* last) to quash these * orders; and a rule was this act of the taken to shew cause why the orders should not be quashed. Note—After sessions is no taken to shew cause why the orders should not be quashed. Note—After order at all: the foregoing motion, and the rule thereupon made, to shew cause why for it neither the orders should not be quashed; a subsequent rule of this court was confirms nor made (on *Wednesday* next after 15 days from *St. Martin*, 33 G. 2.) whereby discharges the it was ordered, that the orders returned with the *certiorari* in this cause be original or- sent back to the sessions. In consequence whereof, at the *Epiphany* sessions, der; but, in holden on the 15th of *January* last, that court made an order, whereby effect, ad- (after reciting the former transactions, and also that the counsel had al- journs the ap- (after reciting the former transactions, and also that the counsel had al- ledged that the court of *King's Bench* could not proceed to give judgment, peal hither. for want of the court of sessions having either confirmed or discharged the Yet no notice former order) they therefore order that the said order of removal be dis- was taken of charged. This second order of sessions being returned up, in obedience to the above-mentioned rule of this court—Mr. *Ley* (on behalf of the this, at the parish of *Kniveton*) moved, upon *Tuesday* the 12th of *February* last, to ing the mo- quash it; and obtained a rule to shew cause why it should not be quashed. tion. Note—This case had now changed its name: for, upon the order of re- moval from *Kniveton* to *Tiffington* being discharged by the sessions, the pa- rish of *Kniveton* became chargeable with the paupers; and, according to the rule prefixed to these papers, were to be named defendants here: whereas, before this last order of sessions, the parish of *Tiffington* stood charged with them, and consequently were at that time to be named defendants here.) To this order of sessions (discharging the original order of the two justices, who had holden the settlement to be at *Tiffington*) three exceptions were taken on behalf of the parish of *Kniveton*, who now stood charged under the

the present order of sessions. Two of them were not very important: and the court laid no sort of stress upon either of them in reversing the order of sessions. One of them was, that it did not appear that the pauper resided in *Kniveton*: (though it is stated, that he entered upon the farm there, and continued the possession, &c.) The other was, that the justices at sessions had no jurisdiction to make this present order of discharge; because the former sessions had not, upon the original appeal, adjourned such appeal to a subsequent sessions, but to the court of *King's Bench*. But the material and principal objection was, that this case, as stated upon the orders, appeared to be a tenement under the yearly value of ten pounds, within the intent and meaning of the statute of 13 & 14 *Car.* 2, c. 12. The counsel for the parish of *Tiffington* denied this, and alledged, that it was above the yearly value of 10*l.* Which they thus endeavoured to prove. First—They argued that *Wibberley*, the pauper, was liable (as being joint-tenant with *Hill*) to answer for and pay the whole 3*l.* 15*s.* And, moreover, that he was sole tenant of that farm, for and during the last half year. Secondly—But taking it at the strictest, it is really and properly a payment of 10*l.* 1*s.* 6*d.* *per annum*, by *Wibberley* the pauper. For he is to pay 8*l.* *per annum*; plus, half 3*l.* 15*s.* (which is 1*l.* 17*s.* 6*d.*) plus 4*s.* for the last half year: which is, in all, 10*l.* 1*s.* 6*d.* But the court unanimously held, that this tenement thus rented by the pauper, in *Kniveton*, was under the yearly value of 10*l.* The act of parliament fixes the yearly value at ten pounds: and the value must be estimated by the rent; and always is taken to be according to the rent. And here, the rent is 8*l.* *per annum*, and the half of 3*l.* 15*s.* Which two rents taken together, do not amount to 10*l.* Indeed, he was to pay *Hill* 4*s.* for the advantage he was to have, after the crop was off. But an agreement of this sort, between the two joint-tenants, cannot be considered as a rent. Wherefore, *Per Cur.* unanimously—Order of sessions quashed: order of two justices affirmed.

Settlement by Taxes.

On Monday 19th of *November* last (1733) a motion was made by Mr. *Settlement* Serjeant *Chapple*, to quash an order of sessions confirming an order of two justices for the removal of *Mary Tooke*, widow, and her children, from *Kenton* to *Oakehampton*. It is stated in the order of sessions, that her husband was a tide-waiter residing in *Kenton*; and had a salary, for which he was rated by the assessors of the land-tax in *Kenton*, where he several years resided; and that he was therefore rated to the land-tax in *Kenton*; and that was paid some time by himself, and repaid to him by the collector of the customs; and afterwards, by the collector of the customs. They adjudge that this was not a settlement in *Kenton*: and therefore confirm the original order. Mr. *J. Page* and Mr. *J. Lee* desired him to look into it; and move it again. Upon renewing the motion on the *Friday* following (the 23d of *November*) it was argued, by Serjeant *Chapple*, that this is notice within 3 & 4 *W. & M.* c. 11, *sect.* 6. In *Comb.* 410, between *Foston* and *Dalbury* parishes, or *Blood's* case, *Holt* said, That payment of the

gained by a tide-waiter who was rated and paid the land-tax, tho' he was repaid by the collector. 1 *Bur.* Sett. Ca. 5. *East.* 7 *Geo.* 2. *Rex v. inhabitants of Oakehampton.*

the land-tax had been held a sufficient notice. 5 *Mod.* 331, S. C. In *Comb.* 282, it was ruled, that the rating a poor occupier of a house, for his landlord, to the king's taxes, is a rating him within the new explanatory act to make a settlement. By 9 *G.* 1, fo. 403, there is a provision that a tax to the scavenger's rate or high-way shall not gain a settlement. Now this is a tax of a higher nature: and, therefore, not being provided against, it still gains a settlement. Rule to shew cause. Upon shewing cause (on Monday 27th May 1734) it was argued by Mr. *Strange*, in support of the order of sessions, that a taxation without payment gains no settlement. So is 2 *Salk.* 523, between the inhabitants of *Talborn* and *Boston*, expressly. Then the question is, Whether he has paid his share towards the public taxes or levies of the parish. And it is plain that he has not: for, it was not his own money; but the money of the collector. The statute of 3 & 4 *W. & M. c.* 11, sect. 6, makes a payment towards the publick taxes or levies (in general) of the parish, to be necessary to a legal settlement in it. It is in the plural: and therefore the payment of one single tax is not sufficient. Lord *Hardwicke*. Suppose a landlord had agreed to reimburse his tenant; would not the tenant be settled? The collector did not pay it to exonerate the parish, but to better the man's salary. *Cur.* It has been settled, that land-tax is a parish-tax, within the act. And his being taxed for his salary makes no difference. Rule made absolute for quashing the orders.

Settlement
gained by te-
nant paying
the land-
tax, though
repaid by the
landlord. 2
Bur. Sett. Ca.
488. Mich.
33 Geo. 2.
(Nov. 28,
1759) Rex. v.
inhabitants of
Fulham.

Two justices removed *Alice Brooks*, widow of *John Brooks*, and her four children by him (naming and describing them) from *St. Margaret's Westminster* to *Fulham*: and the sessions confirmed their order, stating the case specially. Case—*John Brooks*, deceased, late husband to *Alice*, being settled at *Fulham* 14 years ago, afterwards took a messuage or tenement in *St. Margaret's Westminster*, at 6l. 10s. a year. He entered into and continued in possession thereof several years; and during his residence in the said messuage or tenement, he the said *John Brooks* was assessed and taxed, by the assessors of the land-tax there, in proportion to his said rent, for the land-tax due in respect of his occupying the said premises; and paid the said tax or assessment, during such his occupying and residence in the said messuage or tenement, to the collector of the land-tax in the said parish of *St. Margaret*. Afterwards he was allowed the said tax or assessment by his landlord, on his settling his account with him for the rent of the said house. The said *John Brooks* never gained any settlement in any parish since. *Alice Brooks*, his widow, and her four children by him (naming them) are become poor: and neither the said *Alice*, or either of the said children, have gained any settlement in their own right. The sessions, therefore, ratify and confirm the original order, and disinish the appeal. Mr. *Norton* (who had moved to quash these orders) said the justices had determined wrong, from imagining that *John Brooks* had gained no settlement in *St. Margaret's*, because he was allowed the land-tax again by his landlord. To prove which, he cited the following cases—all determined in this court) *Rex v. inhabitants of Oakhampton*, *M.* 7, & *Pasch.* 7 *G.* 2;

the case of the tide-waiter, who was rated and paid to the land-tax for his salary; but was repaid by the collector of the customs. *Rex v. inhabitants of Chidingfold*, in *H. 30 G. 2.* *Rex v. inhabitants of Uffculme*, in *Tr. 1757, 30 & 31 G. 2.* And *Rex v. inhabitants of Painswick*, in *Tr. 1758, 31 G. 2.* Mr. *Burton* now shewed cause against quashing the orders; and Mr. *Morton* supported him. They both argued from the inconvenience; and would have had it supposed that it was the collector of the land-tax, and not the parish-officer, who made the assessment. Mr. *Norton* and Mr. *Stowe*, *contra*, cited the case of *Armley v. Bramley*; where it was determined, that the being assessed and paying two quarterly payments to the land-tax gained a settlement: and insisted that this was a point long since, and very often, fully and formally settled. And upon that foot, of its being a settled point, the court made the rule absolute. Both orders quashed.

Two justices made an order for the removal of *Ezekiel Lofty*, his wife and son, from *Sarratt* to *Bovington*: but upon appeal to the sessions, the order was quashed. The case stated upon the order of sessions was this.—*Ezekiel Lofty*, being settled at *Bovington*, marries, and goes to *Sarratt*, and there hired and lived in a house of 7*l.* 10*s.* *per annum*; where a poor's rate was made for the relief of the poor of *Sarratt*; which rate was signed by one churchwarden and three parishioners, and afterwards by one justice only. The landlord of the house, who never occupied it, was charged in this rate: but the tenant paid it. Another rate was afterwards made, which was signed by the parishioners; but not allowed by any justice of peace: and the landlord was charged, but the tenant paid, as before. Both payments were made by the tenant, upon the demand of the overseers of the poor of *Sarratt*. The two justices held the man's settlement to be at *Bovington*: but the sessions quashed their order; supposing that he had acquired a settlement at *Sarratt*. On *Thursday* the 20th of this month of *November 1745*, a motion was made, by Mr. *Cuninghly*, to quash the order of sessions; for that the payment by the tenant of this poor rate, which was not charged upon him but upon his landlord, could not gain the tenant a settlement. So that the question was, "Whether, if a poor's rate charged upon the landlord, and paid by the tenant, this shall acquire a settlement to the tenant." Lord *Hardwicke*.—The charging is the principal act; as it infers notice to the parish: but both are necessary. Mr. *J. Lee*.—Both the charge upon the tenant, and payment by him, are necessary, to gain him a settlement. Mr. *J. Page* seemed also to think that the tenant must be charged, as well as pay, in order to acquire a settlement. Rule to shew cause. On its coming on, this day, the exception taken to the order of sessions, being repeated, that the tenant was never charged; whereas the act of 3 & 4 *W. & M. c. 11, sect. 6*, requires both a charge and payment. The counsel for *Bovington* urged, That two justices had before made an order, on 24th *April 1734*, to remove these paupers to *Bovington*; and *Bovington* had appealed to the sessions: and their appeal was allowed, because the inhabitants of *Sarratt* did not produce the order; and the inhabitants of *Sarratt* were ordered to pay costs.

Settlement gained by being charged and paying to a poor's rate. 1 Bur. Sett. Ca. 73. Mich. 9 Geo. 2. (Nov. 28, 1735) *Rex v. inhabitants of Sarratt*. 2 Stran. 1023. S. C.

Notwithstanding which order of sessions, afterwards, on the 18th *July* 1734, two justices removed the pauper to the same place: which they had no power to do; being precluded by the allowance of the appeal. Lord *Hardwicke*.—This is no objection to the present order of sessions being quashed, upon the merits. For though the rule is, that where the sessions, upon an appeal, confirm an order of two justices, it is final upon the parish charged, as to all parishes whatsoever; but when they discharge the order of two justices, it only binds as between the two contending parishes; yet the order of sessions now before us is not within that rule. For this order only allows the appeal: and an allowance of the appeal is no quashing of the order of the two justices. The sessions only declare that the appeal was proper; and then give costs against the parish of *Sarratt* for not producing the order: but there is no judgment of the sessions one way or the other. Afterwards there is another order made by two justices; and an appeal from it: and the merits are, by consent, adjourned to a subsequent sessions. We must, therefore, take it upon the case returned: and it seems to me to be a very plain case. The counsel for the order of sessions give no answer to the exception taken to it upon the merits. The act requires both a charge and payment: and here is only a payment without a charge. I think the charging is the principal thing: for that is the act of the parish. It may be, that they would not charge him for fear of making him a parishioner. However, they have charged the landlord. If the hand that pays the rate were to make any difference, that would put it in the power of the officer who receives the rate to charge the parish; by receiving it from a person never charged with it. *Per cur.*—The order of sessions was quashed: and the original order of the two justices affirmed.

Settlement
gained by
being rated by
name, and
paying a quar-
ter's church
and poor-ley;
though repaid
by the land-
lord. 1 Bur.
Sett. Ca. 522.
East. 4 Geo. 3.
(May 28,
1764) Rex v.
inhabitants of
Openshaw.

Two justices made an order for the removal of *James Bowden*, *Martha* his wife, and *James*, *Sarah*, *Samuel*, *William*, and *Mary*, their children, from *Gorton* in *Lancashire* to *Openshaw* in the same county: and the sessions, upon an appeal, confirmed that order. Upon *Friday* the 11th of this month, Mr. *Kenyon* moved to quash these orders: and a rule was made to shew cause. The case stated upon the order of sessions was——That the pauper, *James Bowden*, with his family, being legally settled in *Openshaw*, took a house and two crofts in *Gorton*, in 1758, from one *Joshua Oldbam*, at the rent of 3*l.* 10*s.* And the landlord was to pay all leys and taxes, except the window-tax; which was to be paid by the tenant. And accordingly he went with his family to reside upon, and occupied the tenement aforesaid until *May-day* 1762: during all which time, except as hereafter mentioned, *Joshua Oldbam* the landlord paid all leys and taxes. But in the last year, *Oldbam* having some disputes with the overseers concerning his leys for his other estates in *Gorton*, directed the overseer to call upon his tenant *Bowden* for a quarter of a year's poor-ley, and a church-ley, and tell him, “that he his landlord ordered him to pay it, and he would allow it out of his rent.” Whereupon, the overseer accordingly asked *Bowden* for a poor's-ley (being one shilling) and a church-ley (being one shilling and two

two-pence halfpenny) telling him what his landlord had said; and he paid them both, (amounting to two shillings and two-pence halfpenny,) declaring he paid them for his landlord; and the overseer said he accepted them accordingly: but the landlord, not being asked by the tenant to allow it, did not allow it out of the rent, till long after he left the estate, viz. 6th of February 1763, (six days before the granting of the order for the removal of the pauper and his family from *Gorton* to *Openshaw*,) when he repaid the money. The rate or assessment for the relief of the poor of *Gorton* was signed and allowed by three of the principal inhabitants; but was not signed by the overseers, or allowed by the justices, or published in the church: but it was the rate by which the officer collected the poor-ley; and no other was made or gathered by, but in that method, during all the said years. The church-ley was likewise stiled to be a church-ley upon the land-owners; but was not signed by any of the inhabitants. And in both these assessments, the charge in respect of this tenement was as follows, viz. *Bowden's*; as appeared by the assessments, which appeared to be marked with a cross, to denote the payment of the sums charged in the manner set forth in those assessments. And that the pauper's name is *Bowden*, not *Bowden's*. Mr. *Clayton* now shewed cause. He argued, in support of the orders, and on behalf of the township of *Gorton*; and endeavoured to shew that the settlement of the paupers was not in *Gorton*. He observed that there was not both a rating and a paying of these taxes there, upon and by this *James Bowden*: whereas it is absolutely requisite, in order to his gaining a settlement there, that he should be both rated and pay. Here, he was neither rated nor paid in his own right; but for his landlord: and the overseer accepted the payment as for his landlord, who had agreed to pay it, and afterwards repaid it to *Bowden*. He cited the case of *Uffculme*, P. & Tr. 1757, 30 G. 2, B. R. and *Rex v. inhabitants of Painswick*, Tr. 1758, 31 G. 2, B. R. This is not like the case of the Customhouse-officer who had paid it in his own right, but was repaid by the collector: for this man did not pay it in his own right, but professedly for another person; and it was so received. Lord *Mansfield* (without hearing the counsel for the township of *Openshaw*) said it was a clear case; though perhaps not so strong as some other may have been. This was the proper tax upon the tenant: and he is assessed by name, *Bowden's*. The agreement between his landlord and him, that the landlord should pay it, is nothing to the parish. Both orders quashed.

Two justices removed *John Close* with his wife and children from *Armley* Settlement to *Bramley*: which order of removal was confirmed at the sessions. The order of sessions specially states, that after his settlement at *Bramley*, he removed with his said family, and inhabited and farmed lands at *Armley* afore said; for which, he was charged and paid two quarterly payments to the land-tax only. The sessions therefore confirmed the said order of removal. On Tuesday 18th of November 1735, a motion was made, to quash these orders. And to prove that it was a good settlement in *Armley*, the cases between the parishes of *Oakhampton* and *Kenton*, P. 7 G. 2, (where

gained by being charged and paying to the land-tax; though it be not for a whole year. 1 Bur. Sett. Ca. 75. Hil. 29 Geo. 2. Feb. 12,

1735.) Rex v. a tide-waiter was holden to gain a settlement by paying the land-tax;) and inhabitants of a case between *Foston* and *Dalbury* parishes, or *Blood's* case, *Comberb.* 410, B amley, 2 (where *Holt* said that payment of the land-tax had been holden a sufficient Sess. Ca. No. notice;) were cited: and a rule was made to shew cause. The counsel 167, S. C. who shewed cause against quashing the orders argued, that though the tenant did pay the land-tax to the collectors; yet as the land-tax is always allowed or repaid by the landlord, that payment could gain no settlement to the tenant. And here he paid only two quarters, not the whole year's tax: whereas the land tax is an entire tax for the whole year. That saying of *Holt's*, in *Comberbach* 410, is only an obiter saying: it was not the point then in question. In answer to this, it was said, the allowing the money back again by the landlord is no objection: for, in the cited case of the tide-waiter, (the king against the inhabitants of *Oakhampton*) the money was repaid to him by the collector of the customs. Lord *Hardwicke*.—The act of 3 & 4 W. & M. c. 11, sect. 6, does not require a payment for a whole year: the payment of his share is sufficient; though it be not for the whole year. It is all that the statute requires: which is paying his share towards the public taxes or levies of the parish. He might not perhaps reside in the parish during any one whole year; but in part only of two distinct years. The great doubt has been Whether the legislature did not mean parochial taxes. But this has been long gotten over; and the land-tax has been holden to be within the act, from the notice of inhabitancy that arises by the party's being assessed and paying it. Per cur.—The rule must be made absolute; and the orders quashed. Both orders quashed.

Settlement gained by being charged to, and paying the land-tax in a tenement of less than 30l. value. 1 Bur. Sett. Ca. 190. Mich. 10 Geo. 2. (Oct. 25, 1736) Rex v. inhabitants of Worth. A motion was made on the last day of *Trinity* Term last, to quash an order of sessions confirming an order of two justices for the removal of *Mary Simmons* and her four children from *Merstham* to *Worth*. The case stated in the order of sessions is, That one *Francis Simmons* with his wife and children came into the parish of *Merstham* in *Surry*, by certificate dated in *February* 1709. That about *Michaelmas* 1726, *Mary Simmons*, the daughter of the said *Francis*, intermarried with one *Robert Scott*, a *Scotchman*, not having gained any settlement in *England*. That one *Mary Harbour*, a widow and grandmother of the said *Mary*, had purchased three separate tenements of one *Savage* in *Merstham* aforesaid; and being so possessed, in consideration of a marriage then lately had between the said *Scott* and the *Mary Simmons*, by her deed of feoffment, dated 22 Oct. 1726, did bargain, sell, alien, enfeoff, remise, release and confirm one of the said tenements and its appurtenances in *Merstham* aforesaid, to hold to the said *Scott* and his wife and their assigns for the term of their natural lives; and from and after their death, then to the use of the heirs of the body of the said *Robert* on the body of the said *Mary*; and for want of such issue, then to the use of the right heirs of the said *Mary* for ever, and to no other use or behoof whatever. That the said *Robert* and *Mary* entered into and dwelt in the said tenement, soon after the date of the said deed of feoffment; and continued there till about *Michaelmas* 1735: in which said tenement they had four children born, all under seven years of age; and have

have since let the said tenement to one *John Morris* for 40s. a year. That the said tenement was at the time of the execution of the said deed, and still is, under the value of 30*l.* and that the said *Robert Scott* hath been charged to and paid the land-tax for the said tenement, ever since the date of the said deed of feoffment. Upon this case, the sessions dismiss the appeal; and confirm the order of the two justices. The exception taken to this order of sessions was, That *Robert Scott* had gained a good settlement in *Merstham*, by being charged to and paying the land-tax there, whilst he lived upon his own; though it was under 30*l. per annum* in value, and conveyed to him since the making of 9 Geo. 1, c. 7, sect. 5. A rule was made to shew cause why both these orders should not be quashed: which was now made absolute, without defence.

Two justices removed *John Hine* and *Thomazin* his wife, and *James* and *John* their children, from the parish of *Uffculme*, to that of *St. Sidwell* in *Exeter*: and their order was quashed by the sessions, upon an appeal from it. The case stated on the sessions order, was this—*John Hine*, the pauper, purchased a tenement in *St. Sidwell's*: for which, he gave 8*l.* in money, and a note for 4*l.* more; amounting, in all, to 12*l.* He lived there, upon the said tenement, with his family; and was then rated to the land-tax for the year 1746, in the following manner, to wit, occupier, late widow *Hooper's*, now *John Hine's* tenement 12*l.* and for 1747, in the following manner, to wit, Occupier, late widow *Hooper's* tenement, now *John Hine's* tenement 12*l.* And was also rated to the poor-rate for the year 1746, as follows, to wit, Occupier of late *James Hooper's* tenement $\frac{3}{4}$ *per week*: and for the year 1747, in the following manner, Occupier of the late *James Hooper's*, now *Hine's* $\frac{3}{4}$ *per week*. And that the said *John Hine* did, after such rating, live in the said parish of *St. Sidwell* for about one year; and did, during his residence there, pay the said rates, both to the land-tax and the poor, according to the rates aforesaid; and then sold the said tenement and went, with his family, into the said parish of *Uffculme*: from whence, he was removed into the said parish of *St. Sidwell*. The sessions, being of opinion that the said *John Hine* did not gain a settlement in *St. Sidwell's* by being rated and paying as aforesaid, the consideration of the said purchase being under 30*l.* do therefore vacate the said order. Mr. *Gould* moved to quash this order of sessions, on *Wednesday* 4th of last month: and he cited 2 *Salk.* 478, *inter* the inhabitants of *St. Mary-le-More* and *Heavy-Tree* in *Devonshire*: where it was adjudged that one *Facy*, who, being settled at *Heavy-Tree*, went afterwards into the parish of *St. Mary-le-More*, and took a house there, of one pound *per annum*, wherein he lived a year and a half, and paid the rates and taxes due for the said house, became thereby settled at *St. Mary-le-More*; though his person was not rated. Serjeant *Davy* and Mr. *Aston* shewed cause against quashing this order of sessions. They argued that the question turned upon two different acts of parliament, *viz.* 3 & 4 *W. & M. c. 11*, and 9 *G. 1, c. 7*, the former whereof, they insisted, was virtually repealed by the latter. 3 & 4 *W. & M. c. 11, sect. 6*, provides and enacts, That being

being charged with and paying his share towards the public taxes or levies of the parish, shall be deemed to gain a legal settlement in such parish, without notice. 9 G. 1, c. 7, *sect.* 5, enacts, That no person shall gain a settlement in any parish or place, for or by virtue of any purchase of any estate or interest whereof the consideration doth not amount to 30*l.* *bonâ fide* paid; for any longer or further time than such person shall inhabit in such estate. They urged that this latter statute controlled and virtually repealed the former. They asserted that the parish-officers were obliged by 43 *Eliz.* c. 2, to rate this man, as occupier; and that by 17 G. 2, c. 38, *sect.* 4, either the man himself may appeal, if left out of the rate; or other persons may appeal from it, as an unequal rate. And it is against reason, to argue that their rating him should be a recognition of him as a parishoner; when they could neither remove him, nor help taxing him. Lord *Mansfield* and Mr. Justice *Foster* asked whether there had been any determinations upon certificate persons charged with and paying parish-rates, in the small interim between the two certificate acts of 8 & 9 W. 3, c. 30, and 9 & 10 W. 3, c. 11. The latter of which, only recites, in general, that some doubts had arisen upon the construction of the former, by what acts such certificate-person might procure a legal settlement in the parish to which he came. For if there were any such intermediate determinations, they would serve to guide the present. In order to look into which, it stood over with a *cur. advisare vult.* And now Lord *Mansfield* delivered the resolution of the court. It will be necessary to consider how the law stood before the 9 G. 1, c. 7, because the sessions seem to have confounded different acts of parliament, and different qualifications. Now before that act, no man was removable from his own; be the value of the purchase of it, never so small and inconsiderable. And there were then other ways also, of gaining settlements: as, under 3 & 4 W. & M. c. 11, *sect.* 6, either by serving a public annual office in the parish, for a whole year; or by being charged with and paying a share towards the public taxes or levies and burdens of the parish. But this act of 9 G. 1, was levelled only against fraudulent purchases, of small value, made in order to gain settlements: and it declares that purchases of less than 30*l.* value, *bonâ fide* paid, shall not gain a settlement for any longer time than the inhabitancy thereupon shall continue; after which, the purchaser shall be liable to be removed to his former legal settlement prior to such purchase and inhabitancy upon it. And the established construction of this act has been pursuant to the intention of the legislature, to prevent fraudulent purchases: and therefore devises, or other such methods of coming to estates, have not been considered as purchases within this act; because they are not fraudulent. Whereas the present settlement is claimed by being rated and having paid towards the public taxes of the parish: which is quite a different method of gaining a settlement. The man himself is here personally rated: the tax is laid upon a tenement late *Hooper's*, now *John Hine's*. But if he had been only rated as occupier, without adding his name, yet surely that would imply notice of the man's being an inhabitant. But it is objected that the parish were obliged to rate him. Now

I deny

I deny that they were obliged to rate him, if he was a man of no abilities: and he could not oblige them, (even by 17 G. 2, c. 38,) to rate him, if he was not fit to be rated. There is great analogy between this case, and cases upon the certificate-act. And though there are no cases upon that act to be found, between the making of it and of its explanatory act, yet that explanatory act (9 & 10 W. 3, c. 11,) does, of itself, sufficiently determine that a certificate-person would have gained a settlement by being rated and having paid towards the public taxes of the parish, notwithstanding the former certificate-act, of 8 & 9 W. 3, c. 30. That act therefore goes a great way towards the construction of this act. And we are all clear that this act only means to put a negative upon a person's gaining a settlement by making a small purchase, with a fraudulent intention to gain a settlement thereby, in the parish where such purchase is made; and that it does not affect any other method of gaining a settlement. And indeed it is but reasonable that persons who have been rated and have paid towards the public taxes and levies of a parish, should receive assistance from that parish, when they become necessitous themselves. Order of sessions quashed: order of the two justices affirmed.

Mr. Morton shewed cause against quashing the two following orders. Two justices removed *Isaac Moorman*, *Hester* his wife, and *William*, *Thomas*, *Hester*, *Ann*, and *Isaac*, their children, from *Cirencester* to *Painfwick*, both in the county of *Gloucester*: and the sessions confirmed their order. The special case, stated upon the order of sessions, was, That on the 13th of September 1737, the pauper *Isaac Moorman* was bound apprentice, by indenture, to one *Henry Phips* of *Painfwick*, taylor, for seven years; and lived with him, as his apprentice, under the said indenture, in the said parish of *Painfwick*, for three years and upwards: and then, the said *Phips* failing, the said *Isaac Moorman* left him, and never returned to him again. That in the year 1752, the said *Isaac Moorman* took a house lying in the said parish of *Cirencester*, of one *Thomas Clifford*, for a year, at the yearly rent of 32s. and 6d. and agreed to pay the land-tax and poors taxes, and all other taxes, for the said house, for the said year. That the poors rates of the said parish of *Cirencester* being produced in court at the said trial of the said appeal, it appeared, from them, to the court, that the poors taxes for the said house, during the year the said *Isaac Moorman* rented the same, were rated or charged in the manner following; viz. "Thomas Clifford, or tenant." That the said *Isaac Moorman* occupied the said house during the said year for which he took the same, and more; and paid the said year's rent and the land-tax and poors rates and all other parochial taxes for the said house, during the whole time that he so as aforesaid occupied the same house; and had several receipts given to him, in his own name, by the overseers of the poor of the said parish of *Cirencester*, for several payments by him to them made to the poors rates of the same parish; one, only, of which receipts was produced and read in court at the said trial: but that the said *Isaac Moorman* did not know whether his name was or was not inserted in the said rates. And that the said *Thomas Clifford*, during the whole time of the said *Isaac Moorman's* so occupying the said house

Settlement gained by being rated thus — "T. C. or tenant" -- The tenant paid the taxes and gained a settlement thereby. 2 Bar. Sett. Ca. 465. Trin. 31 Geo. 2, (June 7, 1758.) Rex v. inhabitants of Painfwick.

* Sir John Strange has mistaken the name of that case: it should be *Rex v. inhabitants of Sarratt*.

house as aforesaid, lived five miles distant from the said parish of *Cirencester*. See *Stat. 3 & 4 W. & M. c. 11, sect. 6*, and see *Rex v. inhabitants of Sarratt*, in page 603, where it was adjudged that the person must be charged, as well as pay. And see *ante, Rex v. inhabitants of Uffculme*, in page 607, where Lord *Mansfield* seems to say, That the naming the pauper to be the tenant is not necessary: for that it may, without that, be sufficient notice of his being an inhabitant. Mr. *Vernon* moved, on *Saturday 6th May 1758*, to quash these orders. He insisted that this man was sufficiently charged, to notify to the parish of *Cirencester* that he was an inhabitant there: and consequently, he gained a settlement, he said, in *Cirencester*, by the payment of the rates with which he was so charged. Mr. *Morton* now shewed cause: which cause was, that this pauper's settlement was in *Painfwick*; and that he had not gained a new one in *Cirencester*, because he was not rated there. The case in 2 *Strange* 1023, *Rex v. inhabitants of Bovindon* *, proves expressly that the party must be rated in order to gain a settlement: for that the rating is the act of the parish, and is what gives the settlement. Now it is only the house, here, of *Thomas Clifford*: but this man (*Isaac Moorman*) himself is not rated; he is neither expressly named, or even personally hinted at. Mr. *Aston*, *contra*, for quashing the orders, observed that the man is here rated: for it is said that the poor's taxes for the said house during the year that the said *Isaac Moorman* rented the same house, were thus rated or charged; viz. "*Thomas Clifford*, or tenant;" i. e. *Clifford's* tenant, which is a personal rate. But, however, rating the house is enough. The case in 2 *Salk.* 478, between the inhabitants of *St. Mary-le-More* and *Heavy-Tree*, is in point that a rate for a house is sufficient, without a rate on his person. [Lord *Mansfield* was gone up to the *Dutchy* court.] The three other judges were clear about this matter, that the pauper was sufficiently rated to gain him a settlement in *Cirencester*. Mr. Justice *Denison* thought that the court ought not to be over nice and critical in requiring a scrupulous strictness as to the form and terms of rating persons. And he even hinted that rating the house only might, for aught that he saw to the contrary, be sufficient: for the parish could not but know who was the occupier. Therefore he held this to be sufficient to gain him a settlement, having paid the rates accordingly. Mr. Justice *Foster* also held that this was a sufficient notice to the parish; though the tenant was not particularly and expressly named by his own proper name. Mr. Justice *Wilmet* held this to be equivalent to naming him. It is not necessary that he should be expressly named. He said it had been lately so determined; though he did not recollect the name of the particular case. Both orders quashed.

Settlement not gained by paying taxes, unless the person is rated.
1 Bar. Ser. Ca. 100. Hil. 10 Geo. 2.

Two justices removed *Joseph Wilson*, *Ellen* his wife, *Elizabeth*, &c. &c. their children, from the township of *Lower Walton* to the township of *Appleton* in *Cheshire*: the sessions, upon appeal, vacated the order of the two justices. The case stated by the order of sessions was thus—*John Wilson*, father of the pauper *Joseph*, about ten years ago, when the said *Joseph* was a part of his family, rented a farm of 18*l.* a year in the township of *Appleton*.

Appleton, which the father held for one whole year, and during that time (Feb. 10, 1736.) *Rex v. inhabitants of Lower-Walton.* lived upon the said farm in the said town of *Appleton*; and his son *Joseph*, as a part of his family, with him during that whole year. The said *John* the father afterwards lived in the said township of *A.* in a tenement there of about 3*l.* a year value: in which last year the said *Joseph* married, and lived with his wife and family, separate and apart from his father, in another tenement of small value for seven years, in *Appleton* aforesaid. Afterwards, his father, having an estate of about 3*l.* a year in *Lower Walton*, for which he was taxed in his own right, and gained a settlement, agreed with his said son that he should hold the same for a year, and, instead of paying rent, should maintain his father; which he accordingly did: and his said son and family lived in the said tenement for one year, and his father with him; and the said *Joseph*, that year, paid taxes for the said tenement of 3*l.* a year in *Lower Walton*, but was not rated in his own name; but in his father's name; and afterwards continued there till he was removed by the above order. The sessions held that *Joseph Walton, Ellen, &c.* by reason of the premises above-mentioned, gained a settlement in the township of *Lower Walton*; and therefore vacated the order of the two justices. The objection to this order of sessions was, That *Joseph Walter*, the pauper, was not rated, though he paid. Cur.—He must both be rated and pay, in order to gain a settlement. A rule was made on the first *Saturday* in this term to shew cause why this order of sessions should not be quashed, and the original order affirmed: which was now made absolute, without defence.

Order of Removal.

On *Wednesday* 13th *November* last, a motion was made, by Mr. *Stevens*, Order con- to quash an order of sessions discharging an order of two justices for the removal of *S. C. &c.* from *Cirencester* to *Coln St. Aldwin's*. *N. B.* The sessions binds the parish charged against all the world. 1 But. Sett. Ca. 17. Hil. 8 Geo. 2. *Rex v. inhabitants of Cirencester.* The paupers were, by this order of two justices, removed to the same parish whither they had been formerly removed, and such former order discharged. The first order was made on the complaint of the parish of *Minety*: this latter, on the complaint of the parish of *Cirencester*. The parish whither they were sent, on both complaints, was *Coln St. Aldwin's*. The special case stated in the order of sessions is—That on the 12th of *October*, &c. the paupers were removed, by an order of two justices, from *Minety* to *Coln St. Aldwin's*; which order was discharged by the sessions on appeal. And it appearing that the present order is for the removal of the same persons to the same parish of *Coln St. Aldwin*; and that they have not gained any subsequent settlement since the said former order; and the court (of sessions) having heard counsel on either side touching the said present order; and it being insisted on, in point of law, on the behalf of the said parish of *Coln St. Aldwin*, that the said present order of removal ought not to have been made, the said former order having been discharged; and that this court (the sessions) ought not to enter into a re-examination of the merits of the case, or to hear any evidence touching the said settlement;

and this court, (the sessions) being of that opinion, and that the said present order of removal is illegal and ought not to have been made; do discharge the same accordingly. The objection to this order of sessions was, That the sessions had erred, in supposing that the quashing of the first order of removal by the sessions, was conclusive as to all other parishes, as well as to the two parishes concerned in it: and for this reason, viz. that though one parish has not sufficient evidence to fix the pauper there, yet another parish may. The case of *Bedingham* and *Kingston Bowsey* parishes, in *Cartbew* 516, was cited, in point: and see 2 *Salk.* 486, S. C. Mr. *Tates* shewed cause, on the last day of the same *Michaelmas* term 1734. Lord *Hardwicke* then said, he took it to have been clearly settled, that where the sessions upon an appeal confirm an order of removal, and thereby determine a man to be settled in a parish, such determination is conclusive as to all other parishes, as well as to the parties concerned. But where the order of two justices is discharged at the sessions, then it is only conclusive between the two parishes concerned in such appeal. And if any other parish into which the pauper should have come, had evidence more strong than the former parish had, to charge the parish whither he had been before removed by the discharged order, they were still at liberty to make use of it. And this is reasonable: for a third parish may be able to give better evidence than had been given to the sessions by the former parish. And why should one parish be precluded by the insufficiency of the evidence given by another? it may be collusive: it is, at least, *res inter alios acta*; and should only bind the contending parties. Mr. *J. Page*. An order confirmed binds all the world: but when discharged, it is binding only between the parties concerned. Mr. *J. Probyn* agreed to this distinction: because the latter does not determine where the pauper is settled; but only, that he is not sufficiently proved to be settled in the particular parish to which the justices had removed him. Mr. *J. Lee*. I should have been glad to have looked into this case. *Salkeld* differs somewhat from *Cartbew*, in reporting the case of *Kingston Bowsey*. An order confirmed is final, because it determines the place whither the paupers are removed to be the place of their settlement. And it seems to me, that an order discharged equally determines it not to be the place of their settlement; though it may be between other parties, than those who would now have it to be so. Lord *Hardwicke*. It may stand over, if my brother desires it. But the former litigation might be collusive and fraudulent: or the parish first complaining might be ignorant of the most material evidence to charge the appealing parish. It was accordingly then adjourned. But now (on 28th *January* 1734) Lord *Hardwicke* declared they were all satisfied, that an order of reversal is conclusive only on the parishes concerned; and not on all other parishes. Mr. *J. Lee*. I am satisfied from the information of a gentleman who was counsel in the case of *Kingston Bowsey*, which is differently reported in *Salkeld* and in *Cartbew*, that the true report of it is in *Cartbew*; and that an order of discharge is only final between the two contending parishes. Per cur unanimously—The order of sessions quashed. The order of the two justices affirmed.

On Saturday 15th of last November, a motion was made by Mr. Caldecott, to shew cause why an original order of two justices made on 30th December 1754, for the removal of John Saunders and Sarah his wife, and Mary, Samuel, Moses, and Ann, their children, from Thame in Oxfordshire to Bradenham in Bucks, should not be quashed; and the order of sessions made to discharge it, be affirmed. He moved, at the same time, to quash an original order of two justices made on 28th March 1755, for the removal of Sarah Saunders the wife of John Saunders, and Mary, Samuel, Moses, and Ann, their children, from Thame to Bradenham, and the order of sessions confirming it. He obtained a rule to shew cause, in each. There had been four orders made in this case: 1st, An order of two justices to remove John Saunders and this Sarah his wife, and the same four children, from Thame to Bradenham, made 30th Dec. 1754. 2d, An order of sessions discharging it, (made at the next Epiphany sessions.) 3d, An order of two justices made 28th March following (1755) to remove the wife and children from Thame to Bradenham. 4th, An order of sessions, made at the next Easter sessions, confirming it. The motion to quash the two last orders was grounded upon this objection—"That the discharge by the sessions (upon appeal) of a former order made between the same parties, is conclusive, as between the same two parishes; though it leaves the matter at large, as to all other places." 2 Salk. 492, between the parishes of Swanscomb and Shensfield; and Carth. 516*, between Bedingham and Kingston-Bowzey parishes. On Tuesday 3d February last, Mr. Nares, on behalf of the parish of Thame, moved that the orders might go back to the sessions, in order for them to be at liberty to amend the second order; by which, he said, the first original order of two justices was not; in fact, discharged upon the merits (which were never entered into;) but quashed, upon an apprehended mistake in form. And he produced affidavit of the facts he asserted. Which induced the court to give him a rule to shew cause why the second order, viz. the order of sessions made at the Epiphany sessions, discharging the original order of the two justices, should not be rectified, and made agreeable to the truth of the case. On Monday last, the 24th instant, Mr. Caldecott shewed cause against this last rule. He urged his reasons why the minutes of the sessions should not be rectified, and the second order, viz. the order of sessions made at the Epiphany sessions 1755, be altered agreeably to such rectified minutes, inserting the word "quashed," instead of "discharged;" and he produced an affidavit which denied the sessions order being quashed for want of form. The three judges (the chief justice being absent) held it doubtful upon the affidavits, "whether it was discharged upon the merits; or quashed for want of form:" and therefore clearly and unanimously held "that this court can do nothing in it." They consequently discharged this rule about rectifying the order of sessions. Mr. Nares now shewed cause against quashing the two last orders. He allowed the principles laid down, namely, "that the discharge of an order of two justices by the sessions, upon appeal, is conclusive, as between the same two parishes;" because the parish who were appealed against, and whole order was thereupon dis-

Order dis-
charged at
Sessions binds
the contend-
ing parties.
2 Bur. Sett.
Ca. 394, East.
29 Geo. 2,
(May 31,
1756) Rex v.
inhabitants of
Bradenham.

* Both these
cases are in
point.

charged, are estopped to say "that the pauper's settlement is not in their parish:" but he endeavoured to distinguish this case out of the general rule. For, though he admitted that *John Saunders*, the original pauper, falls within this rule, yet the wife and children, he said, do not. For they are sent to *Bradenham*, as the place of their last legal settlement: and the court may very well presume that it was their settlement; though it might not indeed be the settlement of *John Saunders*. As in the case of *St. Michael's Bath* and *Nunny* in *Somersetshire*, 1 Sir J. S. 544, the wife and child of *B.* (who was living) were sent to the place of settlement of the wife and child: and yet the order was confirmed. *N. B.* These two sessions orders were made at the very next sessions, one after the other; viz. the former, at the *Epiphany* sessions; the latter, at the *Easter* sessions, next following: and the man himself, *John Saunders*, was (as *Mr. Caldecott* said) run away in the *interim*. The counsel on the other side (*Mr. Norton* and *Mr. Caldecott*) observed, that here the wife and children were specifically included in the first order of sessions, as well as *John Saunders* himself. Therefore they are expressly within the rule in 1 Sir J. S. 567, between the parishes of *Foston* and *Carlton*—"That after an order of removal is quashed, the pauper cannot be removed a second time from the same place to the same place, without shewing a new settlement:" and the case between the inhabitants of *Barrow* v. *Ingoldby*, P. 11 *Ann.* there cited; (of which, *Mr. Caldecott* said he had seen a fuller MS. report.) In that case, he said, there was no appeal from the first order; and the second was at nine months distance: the court would not presume a new settlement; and as none was stated, they quashed the second order. If there had been in fact a new settlement gained, it ought to have been stated specially. But the 2d order of sessions calls *Sarah Saunders* "the wife of *John Saunders*;" and the children "their children:" so that his settlement must be also theirs. Lord Chief-justice *Ryder* was absent, being slightly indisposed only, as it was then thought*. *Mr. Justice Denison* was clear, that these paupers were within this general rule; and that, even if there had been time to gain a new settlement, yet the court would not intend or presume any thing of that; but it must be specially stated. It was so determined in *M. 4 G. 1*, between *Alderton* and *Fellingtoze* parishes†. So also if it was her settlement, though not her husband's; that also ought to be stated: it shall not be presumed. Therefore both orders ought to be quashed. *Mr. Justice Foster*—It is final upon the same parish who obtained the first removal, if quashed upon appeal, on the merits. For an order quashed upon the merits on appeal, is conclusive between the two parishes: if confirmed on the merits, it is final and conclusive upon the appealing parish, against all the world. To prove this, he cited the case between the inhabitants of *Heniton* and *St. Mary Axe*§, from a MS. of his own. Therefore this is conclusive, unless a new settlement appears to have been gained. So, if a new cause of removal is acquired, they may be removed again: but not otherwise. *Mr. Justice Wilmot* also concurred in opinion for the same reasons. *Per cur.* unanimously—The first original order, made 30th December 1754, for the removal of *John Saunders*,

* But he died the next day, 25th May, 1756.

† I have a MS. account of this case: and it was so.

§ See 2 Salk. 536, S. C.

Saunders, &c. from *Thame* to *Bradenham*, was quashed: and the order of sessions discharging it, was affirmed. The two latter orders (*viz.* the original order made for the removal of the wife and children from *Thame* to *Bradenham*, and the order of sessions made in confirmation of it) were both quashed.

Two justices made an order, bearing date on the 22d of February 1741, 15 G. 2, for the removal of *Thomas Hankin*, *Hester* (of the age of about seven years,) *Elizabeth* (aged about five years,) and *Sarah* (aged about three years,) his three daughters by *Hester* his wife lately deceased, from *Nympsfield* to *Woodchester* (both in *Gloucestershire*;) and the sessions, upon appeal, confirmed this order. The case stated on the order of sessions was this—Before the births of the said *Hester*, *Elizabeth* and *Sarah*, the three daughters of the said *Thomas Hankin* by *Hester* his wife, or either of them, the said *T. H.* and *Hester* his wife were removed from the said parish of *Nympsfield* to the said parish of *Woodchester*, by virtue of an order of two justices of the peace of the said county of *Gloucester* (*Quorum unus*) bearing date the 15th day of February one thousand seven hundred thirty one: and such last mentioned order was confirmed at the general quarter-sessions of the peace of and for the said county of *Gloucester* then next after the date of the same order, by the court, for want of an appeal thereto. And this court (of sessions) now on hearing this present appeal touching the settlement of the said *Hester*, *Elizabeth* and *Sarah*, the daughters of the said *T. H.* and *Hester* his wife, did determine that the said parish of *Woodchester* ought not to be permitted to give any evidence “that the said *T. H.* was married to another woman before his intermarriage with the said *Hester* the mother, so removed with him under the said former order; and that such other woman is still living; which the said parish of *Woodchester* now, on hearing this present appeal, alledged they were ready, and offered to do. On Saturday the 26th of June last, a motion was made, by Mr. Ford, to quash these orders. His objection to this sessions-order, as far as it related to the three children, who were all born subsequent to the first order, was, that the parish of *Woodchester* ought to have been permitted to give evidence “that *Thomas Hankin* the pauper was married to another woman before his intermarriage with *Hester* their mother, who was removed with him by the former order;” and “of such other woman being still living.” For, as his former wife was living, the three children by *Hester*, must consequently be bastards, and were settled where they were born: (which was in *Nympsfield*.) His objection went only to the children: for he acknowledged that the man himself was fixed upon *Woodchester* by the former order unappealed from. But he insisted that the parish of *Woodchester* were not concluded by that order, though unappealed from, with regard to the children who were born subsequent to it. The counsel who shewed cause now against quashing the orders (*Mr. John Tate*, long since deceased) laid it down as a settled rule, “that orders of removal confirmed at sessions as being unappealed from, are conclusive upon the parish charged with the paupers, against all the world.” The only difference between the

Order confirmed at sessions, without appeal, is conclusive upon the parish to which the pauper is removed. 1 Bar. Sett. Ca. 171, Mich 16 Geo. 2, (Nov. 11, 1742) Rex v. inhabitants of Woodchester. Stran. 1172. S. C.

the first and second orders of removal, in the present instance, is the addition of the children: for the removal is of the same father and mother; and from and to the same parishes. The parish of *Woodchester* are now estopped to say "that they were not man and wife." It may be urged, "that the marriage is not the matter expressly adjudged." But it is adjudged as much as it possibly could be in an order of removal. The counsel for *Woodchester*, who argued in support of the rule (Sir *John Strange* and Mr. *Ford*) agreed that the order confirmed and unappealed from was conclusive upon them, as to the man: but they argued that it was not so as to the children. *Estoppels* are not to be favoured. They ought to be plain, positive and certain; not argumentative. Now there may be a case supposed, where *Woodchester* could not have appealed, even though they had known "that she was not his wife:" and that is, supposing her own settlement was at *Woodchester*. The mere calling her his wife, does not prove her to be so, or stop us from shewing the contrary. The present estoppel tends to do injustice; and therefore shall not conclude the parish of *Woodchester*. Lord Chief-justice *Lee*.—It must be agreed that the original order confirmed by the sessions is final as to the man and wife. Then the man and the children, being again at *Nympsfield*, are, a second time, removed to *Woodchester* as their settlement: and upon appeal, it is attempted to give evidence "that the father and mother were not man and wife." But that must have been examined and inquired into by the two justices who made the original order: for they have removed these two persons as man and wife. It seems a very foreign intendment to suppose, "that the mother had any other right to the settlement, than as the wife of *Hankin*." And if she was removed as his wife, her settlement has been determined. And the present inquiry relating to the children must depend upon her settlement as wife to *Hankin*. Mr. Justice *Chapple*.—An order of removal confirmed by the sessions upon the merits, is conclusive against every body: and so it is also, if confirmed by them without appeal. This woman was removed as wife to *Hankin*: we can't intend that she had any other settlement. It seems to me to be an estoppel. Mr. Justice *Wright* and Mr. Justice *Denison* thought this exactly within the case of *New Windsor* and *White Waltham*, Tr. 5 G. 1, B. R. * where it was determined "that if a parish give a certificate to a man and his wife, they are bound both as to the man and wife and also as to the children: and they cannot be admitted to dispute the validity of the marriage." Now does not this confirmed order bind as much as the certificate binds? It is a judgment of a court who had a proper jurisdiction; and is therefore as strong as the acknowledgment by a certificate. Mr. Solicitor-general (*Strange*) would have distinguished this certificate-case of *New Windsor* and *White Waltham* from the present: but the court said they could see no distinction between them; and were satisfied that they ought not to be let in to controvert the question of the marriage over again. The settlement of the children is a derivative settlement: it must and will depend upon the validity of the mother's marriage, and can't be controverted

* See it in 1
Sir John
Strange, 168.

controverted without controverting the marriage, which has been already admitted. Therefore, *Per cur.* Orders affirmed.

Two justices removed *John Pickering* and *Elizabeth* his wife, and *Thomas* their son, from *Baxterley* to *Bentley* (both in *Warwickshire*;) and their order was confirmed by the sessions. It was moved, in this court, to quash both these orders. Mr. *Wheeler* moved it, on *Saturday 5th February 1757*. The case stated was—That this *John Pickering* was hired and served for a year in *Bentley*; and before the (then) last general quarter-sessions, he was removed, by proper order, from *Baxterley* to *Stourbridge*, as the place of his last legal settlement: which order of removal was quashed, upon an appeal, by the said (then) last general quarter-sessions. And since the said last sessions, the pauper being removed from *Baxterley* aforesaid to *Bentley*, *Bentley* appealed, and offered to prove a settlement in *Stourbridge*, by a hiring and service for a year in *Stourbridge*, before the said last sessions, but subsequent to the said hiring and service in *Bentley*: but the court of sessions refused to go into it; being of opinion “that the determination of the court at the said last sessions was final and conclusive; so that no evidence could be given by the hamlet of *Bentley*, of a settlement in *Stourbridge* gained prior to the said last sessions.” It was objected to these orders, as a reason why they ought to be quashed, “that this opinion of the sessions was altogether erroneous:” it being a settled distinction, “that though an order of confirmation is indeed conclusive and binds all the world; yet an order of reversal or discharge is only conclusive on the contending parties, and is final only between the two parishes concerned, but does not bind a third parish.” In proof of which distinction, the following cases in point were cited, viz. 2 *Salk.* 527, *inter* inhabitants of *Mynton* and *Stony-Stratford*. 1 *Strange* 232, between the parishes of *Little Bitham* and *Somberby*. *Cartbew* 516, between *Bedingham* and *Kingston Bowsey* parishes. *Hil.* 8 G. 2, 1734, *B. K. Rex v. inhabitants of Cirencester*. (It ought to have been so cited; not as the case of inhabitants of *Coln St. Aldwyn’s*.) And the court unanimously agreed to this distinction: (and indeed Mr. *Norton*, who shewed cause against quashing the orders, did not dispute it; but only endeavoured to shew that the present case was not within the general rule.) They said it had been long ago fully settled and established; and with very good sense and reason, and upon right and just principles. For where the order of removal is confirmed upon appeal, and the pauper thereby fixed upon the parish appealing, such parish so charged was party to the litigation, and has been fully heard, and the law has run its course as to them; and therefore the determination is, and it is reasonable that it should be, conclusive upon them as to all the world, and all the world may take advantage of it: but where the order of removal is vacated and discharged, the two contending parishes are indeed estopped and concluded by the determination; but no third parish is estopped or concluded thereby: for the point has never been determined as to them, who were no parties to the former litigation, or have ever been heard at all. Now in the present case (as lord *Mansfield* observed) there

there is only a negative opinion, in a litigation between *Baxterly* and *Stourbridge*, "that the pauper was not settled at *Stourbridge*." But, notwithstanding this, tho' *Baxterly* might not be able to shew that the settlement was really at *Stourbridge*, yet *Bentley* may be able to give stronger evidence than *Baxterly* could, and may be able clearly to prove it. So, in the case of *Coln St. Aldwyn's*, that was negatively determined "not to be the settlement of *Mary Coats*, in a litigation between *Minety* and *Coln St. Aldwyn's*:" (from the former of which places the two justices had removed her to the latter; and their order was discharged on appeal.) But when two other justices made a subsequent order to remove her from *Cirencester* (a third parish) to this same parish of *Coln St. Aldwyn's*, without her having gained any subsequent settlement there, since the former order; and the sessions, upon appeal from this second order, were of opinion "that it was illegal," and discharged it; and the point thereupon came before this court; lord *Hardwicke* said he took the distinction now laid down, to have been clearly settled, and he held it to be a reasonable one: and he added the reason for it, namely, "because a third parish might be able to give better and stronger evidence, than the former parish could produce, to charge the parish to which the pauper had been antecedently removed by the discharged order; and if the third parish, that is to say, any other parish, into which the pauper should come, had such stronger evidence, they ought to be at liberty to use it, since all the former transaction was *res inter alios acta*." So here, *Bentley* may be able to give stronger evidence to fix the settlement at *Stourbridge*, than *Baxterly* could: and what then passed, was *res inter alios acta*. Therefore this case of *Coln St. Aldwyn's*, and the reason of it, are decisive in the present case. * *Per cur.* unanimously and clearly—Both orders quashed.

• Mr. Justice Wilmet was now present.

Order quashed for want of sessions confirming an order of two justices made for the removal of *A. B.* from *Chesham* in *Bucks* to *Stepney* in *Middlesex*. The first exception justices shewing they have jurisdiction. was, that the order of the two justices is too uncertain, having no county mentioned in the margin, and being directed to the churchwardens and overseers of two parishes in two different counties, (*viz.* *Stepney* in *Middlesex*, and *Chesham* in *Buckinghamshire*;) and they only call themselves justices of the peace for the county aforesaid. So that they do not appear to have any jurisdiction: for by 13, 14 C. 2, c. 12, the jurisdiction is given to the justices of the county where the pauper comes to inhabit. And it is incumbent upon the justices to shew "that they have jurisdiction." It ought to appear upon the face of their order "that they were justices for the county of *Bucks*." 2 *Salk.* 474, *Rex v. Dobbyn*. A second exception was, that the order is all by way of recital, and therefore has no adjudication: for it affirms nothing. It only says,—“whereas it appears to us, &c. and we do accordingly adjudge:” so that it contains no positive words; but is all mere recital, without any adjudication. The counsel, who shewed cause against quashing the orders, endeavoured to defend the order of the two justices against these objections. It runs thus:

thus: "Whereas complaint hath been made by you the churchwardens and overseers of the poor of the said parish of *Chestham* unto us, whose hands and seals are hereunto set, two of his majesty's justices of the peace, one of us of the *quorum*, for the county aforesaid, that," &c. and then it goes on—"and we do accordingly adjudge." This is a direct and positive adjudication. And as to the other objection, it is a good order enough, they said, unless the court will presume it to be made by justices of *Middlesex*. But the complaint was made by a parish in *Buckinghamshire*; the paupers resided in *Buckinghamshire*; and the examination was taken in *Buckinghamshire*. Therefore the court will not presume that the justices of *Middlesex* did all this; since the nature of the facts determine the contrary. In a case between the parishes of *Horsham* and *Henfield*, *B. R. P. 5 G. 1*, the order was expressed to be made on complaint by you, in general, not saying which parish complained. The court held that the complaint must be necessarily intended to be made by that parish who were aggrieved by the residence of the paupers. So here, it is sufficiently certain to a common intent, that this removal must have been made by the justices of *Bucks*; and the rather, because the *certiorari* is directed to the justices of the county of *Bucks*. Lord *Hardwicke*.—The insertion of the word "and," in this order—(Whereas it appears to us, &c. and we do accordingly judge) does, in strictness, connect the recital; and grammatically makes the whole sentence to be recital only. But that alone would not have very great weight with me: it would be too hard to quash for this, since there are the words "we do adjudge." But it is quite uncertain, upon the other exception, for which county they are justices. As to what has been urged in respect of the court's presuming or intending them to be justices of *Middlesex* in order to make it bad;—the answer is, That the court can intend nothing at all about it. And it is not like the case between *Horsham* and *Henfield*: for there the strict sense of the word "you," was, that the complaint was made by all of them; and therefore it was in substance well. I do not think therefore that this exception has received or can receive an answer. Mr. *J. Page*.—As to the intendment—we can intend nothing. The order ought to appear to us to be good: which this does not; for the word "aforesaid" equally relates to both counties. Mr. *J. Probyn*.—We cannot support these orders by intendment: for, those who act under a jurisdiction given by act of parliament must shew their jurisdiction. Mr. *J. Lee* was of the same opinion. Per cur. unanimously, the rule must be made absolute to quash the orders.

On *Wednesday* the 11th of *February* last, a motion was made, by Mr. Order quashed—*Henley* and Mr. *Gundry*, and on *Monday* 20th of *April* 1741 renewed by ed for having Mr. *Denison*, to quash an order of sessions confirming an order of two amended mat- justices for the removal of *Charles May*, *Mary* his wife, and *Joan*, *Hodges*, ters of sub- stance. 1 Bur. Sett. Ca. 163. (both in *Wiltshire*.) *Case*.—*Great Bedwin* appealed to the sessions, from Trin 14 & 15 an order of two justices, which begins thus—"Wills—To wit—To the Geo. 2, (June 16, 1741.) churchwardens and overseers of the poor of the parish of *Wilcot*, and to Stran. 1158, the

2 Sess. Ca. No. the churchwardens and overseers of the poor of the parish of *Great Bedwin*
 142, S. C. in the said county :” and it states, that *Charles May, &c.* have for some time dwelt in *Wilcot*, being allowed to do so by reason of a certificate bearing date 27 Dec. 1724, under the hands and seals of the churchwardens and overseers of the poor of the said parish of *Great Bedwin*, and allowed by two justices of the peace for the county of *Wilts* aforesaid according to the directions of the several acts of parliament in that behalf made and provided. Then it goes on thus—“ Now the said *Charles May*, being reduced to great poverty, lately applied to the churchwardens and overseers of the parish of *Wilcot* aforesaid ; who accordingly did relieve him :” and therefore the justices remove him, &c. from *Wilcot* to *Great Bedwin, &c.* The sessions, on motion made on behalf of the parish of *Wilcot*, suggesting defects in form, and praying that they might be amended pursuant to 5 G. 2, c. 19, and counsel heard on both sides, &c. being of opinion that the said defects are only matters of form, and that the original order was amendable within the said act ; for that it appears to them, upon due examination on oath, that the said order was really and truly made by the two justices upon the complaint of the churchwardens and overseers of *Wilcot* in due manner made to them in that behalf. That the said C. M. his wife and children were actually become chargeable to *Wilcot* ; but that the omitting to mention it in the order was a mere mistake in drawing up the said order ; and for that it doth also now appear to this court, that the said G. H. and J. S. were at the time of making the said order two of his majesty’s justices of peace of and for the said county of *Wilts*, and that one of them was then of the quorum, and that the omitting to mention the same in the said order was also a mere mistake in drawing up the said order ; therefore order the defects of the said original order to be amended in court : which being accordingly done, the said original order (as the same is now amended by order of this court) is as followeth—“ *Wilts, to wit, &c.* Whereas it appears, &c. (one whereof is of the quorum,) upon the complaint of the churchwardens and overseers of the poor of the parish of *Wilcot*, that, &c. (as in the original order,) and that he and his family became thereby actually chargeable to the said parish of *Wilcot*, as we hereby adjudge, &c. &c.” And the said appeal against the said order as now amended, now coming on to be heard and determined on the merits ; this court having heard and considered what has been offered in evidence on behalf of both the said parishes, is of opinion that the said order, as amended, ought to be confirmed : and they confirm it accordingly. The objection to this order of sessions, and the ground of the motion to quash it, was, That they had amended matters of substance as matters of form : which is an amendment not warranted by the act of 5 G. 2, c. 19. For they have added, 1st, that it was made upon complaint of the parish officers of *Wilcot* ; 2dly, an adjudication that the paupers were actually become chargeable ; and 3dly, that the justices were justices of the peace for the county of *Wilts*, and that one of them was of the quorum. Yet still it does not appear what county *Wilcot* is in : for, the words—“ in the said county”—relate only to *Bedwin*, not to *Wilcot*. If
 they

they had quashed it for want of form, a new original order might have been made. Mr. *Hollings* likewise supported the motion, and added some other objections. It was defended by Sir *John Strange* and Mr. *Bootle*. The court were all of opinion, that the amendments were more than form; and not allowable within either the words or the intention of 5 G. 2, c. 19. Lord Chief-justice *Lee*.—I think we have had but one case upon this act of parliament, since the making of it; and that came from the county of *Bucks*: the amendment was of a removal to the wrong place; which appeared upon the face of the order to be a mistake; for they adjudged the settlement to be in one parish, and yet removed to another. A rule was made, in that case, to shew cause: but there was no further proceeding upon it. The act directs that the sessions shall amend defects in form; and afterwards proceed upon the merits. One would think, this meant defects or mistakes appearing upon the face of the order, like that *Buckinghamshire* case which I have mentioned; mere defects or wants of form. This is the first thing they are to do. Then after amendments in form, they are to examine the truth and merits; and hear proofs, and determine. Now some of these matters here amended seem to be merits: as, for instance, the adding “upon complaint of the overseers of the parish from whence the paupers were removed;” without which complaint, the justices have no jurisdiction. Then what can be more of the merits than the certificate-man’s being become actually chargeable? now the two justices have not adjudged that; they only say that he applied to the overseers and was relieved by them: but it does not appear that it was at the parish expence. And as there are no other merits particularly stated by the order, probably, these were the very merits which were the ground of the appeal. If there be any opposition between form and merits, this amendment must go further than defects in form: these matters must be merits. And as to their being justices of the county—though a plain reference to the margin will make an order good as to the county, yet this is uncertain (as it is worded) to which of the two parishes the words—“in the said county”—relate. The allowing such amendments as these to be within the true construction of this statute, would throw the determination of all cases of this sort into the hands of the sessions: which would be inverting the established method prescribed by the legislature. The three other judges concurred in opinion. And * Mr. Justice *Wright* added, That the sessions can’t amend any thing that requires examination. Per cur.—Rule made absolute: both orders quashed.

of B. R. on 24th Nov. 1740; on Sir Edm. Probyn’s being made Lord Chief-baron.

Two justices of *Surrey* made an order for the removal of *Mary Edwards*, widow of *William Edwards* lately deceased, and her three children (naming them and specifying their ages) from *Mitcham* in *Surrey* to *Great Bedwin*. Their order recites the complaint made to them by the churchwardens and overseers of *Mitcham*; and proceeds thus—“And whereas, upon due examination and enquiry made into the premises on the oath of the said *William Edwards* deceased, and other circumstances, it appears to us, and we accordingly

cordingly adjudge that the said *Mary Edwards* and her three children (naming them) are become chargeable to the parish of *Mitcham* ;” and they adjudge that the last legal settlement of the said *William Edwards* the father, deceased, is in *Great Bedwin* ; and remove the paupers thither accordingly. This original order was confirmed, on appeal, by the quarter-sessions of *Surrey*. On *Saturday* 14th of *November* last, Mr. *Baynham* moved to quash these orders. His objection (and his only one) was that the order of the two justices appeared to be bad upon the face of it ; as being expressly stated by them, to be made upon the examination of a person deceased : which he alledged to be an inconsistency and absurdity. The court gave him a rule to shew cause. On shewing cause—Mr. *Dunning*, solicitor general, who shewed cause, said the fact was, that the man died between the examination and the making of the order : so that the order was neither inconsistent nor absurd. However, the objection now insisted upon by Mr. *Baynham* was, that there was no adjudication in the original order. And upon this objection the rule was made absolute for quashing the orders.

In every order there must be either an express adjudication or plain reference
 1 Bur. Sett. Ca. 39. East. 8 Geo. 2 (May 17th. 1735.) Rex v. inhabitants of Bourn. 2 Seff. Ca. 299, S. C.

Two justices made an order for the removal of *Henry Burnham* and his wife from *Spalding* to *Bourn* : and, upon an appeal, the sessions confirmed it. The order of the two justices had in its margin the words, “ *Lincoln Holland.*” It was directed to the churchwardens and overseers of the poor of the parish of *Spalding* in the parts aforesaid, and to the churchwardens and overseers of the parish of *Bourn* in the county of *Lincoln*. “ Whereas complaint hath been made by you unto us, &c. being two of his majesty’s justices of the peace (*quorum unus*) for the parts of *Holland* aforesaid, That *H. B.* and his wife have lately intruded themselves into your said parish of *Spalding*, there to inhabit, &c. and are there become chargeable ; and whereas, upon due examination and inquiry made into the premises, and upon the oath of *Henry Burnham* taken before us, it appears unto us, and we accordingly adjudge, that the said *H. B.* and his wife are become chargeable ; and that his last legal place of settlement was in the parish of *Bourn*, by being an apprentice in that parish to one *John Lambert* a glover : therefore we do adjudge *Bourn* aforesaid to be the place of their legal settlement. These are therefore, &c.” The order of sessions recites this original order of the two justices ; but, very erroneously recites that they had adjudged that they were likely to become chargeable to the said parish of *Spalding*. On *Saturday* 26th of *April*, a motion was made to quash these orders ; and a rule was granted to shew cause : and on *Thursday* the 8th of this month it came on to be argued. Divers exceptions were taken : some, on the former day ; some, on the latter. 1st, There is no county either in the body or margin of this order of the two justices : it is only “ *Lincoln Holland,*” (not *Lincolnshire.*) Nor is the county at all named in the body ; nor has the body any reference to the margin. In *Tr. 8 G. 1, Rex v. the inhabitants of Sberingham*, an exception was taken to an order, that the county was only in the margin : and it was holden to be a good exception. So likewise in the case of *Rex v. the inhabitants of Underthwaite,*

thwaite, H. 9 G. 1. And in *M. 11 G. 1, Rex v. Austin*, the case of *Rex v. Sheringham* was agreed to be good law. 2d Exception.—The complaint is said to be made by you to us. Now the act confines the removal to be upon a complaint to be made by the proper officers of the parish aggrieved: a complaint *ex officio* coming from any other person is nothing. 2 *Salk.* 492. *Poley's Poor Laws* 84. 5 *Mod.* 149, and *Comberbac's* 354. The case of *Marlborough and Weston-Rivers*. 3d Exception.—It is not adjudged that the party is likely to become chargeable to the parish complaining; but only that the paupers are likely to become chargeable, generally. In *H. 11 G. 1*, between the parishes of *St. Nicholas in Gloucester*, and *St. Peter's in Bristol*, upon an order for the removal of *Mary White*, the reciting part of it was, "Whereas the pauper was likely to become chargeable to the parish of *A.*" but in the adjudicating part, they only said, "that she was likely to become chargeable," without adding the other words "to the parish of *A.*" The chief-justice held it bad for this exception. And a rule was made to shew cause. [See *Sessions Cases*, Ed. 1750, vol. 2, pa. 69, 70, S. C.] 4th Exception.—The settlement of this man in *Bourn* is stated to have been acquired by his having been an apprentice to one *Lambert* a glover in that parish: and therefore they adjudged *Bourn* to be the last legal place of his settlement. Now the mere having been an apprentice is not sufficient to gain him a settlement: they ought to have shewn that his master was not a certificate-man, and that the apprentice had served him forty days there. 5th Exception.—The order is misdirected; being to the churchwardens and overseers of the parish of *Bourn*; not adding "of the poor." Now there is no such officer as overseer of a parish: they are overseers of the poor of the parish. 6th Exception.—The justices describe themselves as justices of the peace &c. *quorum unus*: which is *Latin*, and not a technical term, (though *quorum* alone, without the addition of *unus*, is a technical term.) The counsel, who spoke in defence of the orders, answered, 1st, The commissioners of the peace in *Lincolnshire* are distinct commissioners for the three divisions of that county, which are *Holland*, *Kesteven* and *Lindsey*: and the constant manner of marking these different districts in the margin of orders is not by the county (*Lincolnshire*,) but by the division, as this is, "*Lincoln Holland*," "*Lincoln Kesteven*," "*Lincoln Lindsey*." And the court will take notice of these divisions of this county. In orders of removal, the reference made to the margin in the body of the order is sufficient. To prove this, they cited the same case of *Rex v. Sheringham*, which had been cited against them. For here it is so referred, in these words, "The parish of *Spalding* in the parts aforesaid." 2dly, The word "you," in this order, must mean the persons to whom it is directed: and they are the churchwardens and overseers of the parish aggrieved. 3dly, The complaint recited is, That they were likely to become chargeable to *Spalding*: and then the justices (after having heard this complaint, and examined into it upon oath) adjudged them likely to become chargeable, in general. The reference to the before recited complaint renders it certain where they are likely to become so. *H. 5 G. 1*, between the inhabitants of *Barholm* and *Witham* in *Lincolnshire*.—

This same exception was taken and over-ruled. The complaint was right. And the adjudication was, "it appears to us, and we accordingly adjudge, that the said *J. S.* is likely to become chargeable," but did not say to what parish. The court said they would take it according to the subject matter; and held that the word "accordingly" referred the adjudication to the complaint, which did set forth "that he was likely to become chargeable to that particular parish." 4thly, The apprenticeship is only mentioned to shew the nature of the settlement which he gained in *Bourn*. It was not necessary to shew, exactly and circumstantially, how he gained it. *M. 11 Ann. Rex v. the inhabitants of Crowland*—The pauper was adjudged to be last legally settled in *St. John Baptist's*, having served there one whole year with one *J. D.* It was objected, "that it did not appear upon the face of the order, that he was hired for a year." But the court held that it was not necessary: for it shall be presumed. So here, as the justices have adjudged that he gained a settlement in *R.* by having been an apprentice there, it shall be presumed that he served forty days to a proper master. [And they might have added the case of the king *v. the inhabitants of St. Mary Calender's Winchester, M. 5 G. 1*, in point. An order of removal was holden good, though it was not said "that the apprentice had served forty days, &c." but only, "that his last legal settlement was in *M.* he having served as an apprentice there."] 5thly, The overseers of the poor of the parish are overseers of the parish. But the churchwardens are also mentioned in the direction, (which is "to the churchwardens and overseers of the parish of *Spalding* in the parts aforesaid.") And surely this description is sufficient when joined with the word churchwardens, who are themselves overseers of the poor of their parish. 6thly, *Quorum unus* is a technical term, as much as *quorum* alone. The court were of opinion that none of these exceptions were of any weight, and were sufficiently answered, except the third: upon which they had some doubt; and therefore took time to consider it and look into the cases, to see if that point had been already determined. Lord *Hardwicke* now delivered the opinion of the court. The exceptions which have been taken are of no material weight, except the third. As to the first—We must take the words in the margin (*Lincoln Holland*) to mean that *Lincoln* is the county of *Lincoln*, and *Holland* the division: and the court will take notice of the divisions of this county. And the body of the order refers to the parts aforesaid, and (in another place) to the parts of *Holland*. And the reference to the margin is sufficient in orders of Justices. In the case of *Rex v. Fosset, P. 12 W. 3, B. R.* the court held that in order of justices, the county being in the margin only, and the place where, not being said to be in the county aforesaid, it would be ill for want of such reference: but the opinion of the court, in that case, takes it for granted that an order would be good with such a reference to the margin. I take it to be always so in orders; and can find no case to the contrary. The case of *Rex v. Austin, M. 1724*, does not warrant the exception. That was an order for suppressing an ale-house. The county was only in the margin, but is neither repeated nor referred to in the body of the order: therefore that was certainly ill. The case

case of *Rex v. the inhabitants of Underthwaite* seems to be the same: therefore that was also ill. But there is no authority where there has been a reference to the margin, and it has, notwithstanding such reference, been holden ill. I believe the apprehension that it would be ill, though there were such a reference, has been grounded merely upon a confusion arising from an imperfect taking of cases where there was in fact no reference at all to the margin. We all hold that it is well enough where there is such reference. But we think there is more weight in the third exception; viz. "that there is no sufficient averment that the pauper was likely to become chargeable to the parish of *Spalding*, nor any reference at all to the complaint." We hold that there must be either an express adjudication, or a plain reference; because it is the very point upon which the jurisdiction of the two justices is founded and substantiated. Here the complaint is very well: but the adjudication is at large, there being no words of reference. It is only that they are likely to become chargeable. Now, this may be to their relations or parents, as well as to the parish of *Spalding*: it has no particular reference to the parish of *Spalding*. The case between the parishes of *St. Nicholas in Gloucester* and *St. Peter in Bristol* is similar to the present: "it appears to us, and we do accordingly adjudge:" and yet, notwithstanding the word "accordingly," the order was *quashed. * See Sessions Cases, Ed. 1750, vol. 2, No. 73. The case of the king against the inhabitants of *Witbam*, H. 5 G. 1, was not finally determined by the court, but was referred to the judge of assize. [And so it appears by the Rule-book *Die Jovis prox' post Octab' pur' beatæ Mariæ Virginis, anno quinto Georgij Regis, Rex v. inhabitant' de Wytham super Montem.*] There is no case that I can meet with, upon the strictest inquiry, where an adjudication at large, without some word of reference to the complaint, has been holden good. Both orders quashed.

Two justices made an order for the removal of *Jane Moor*, single woman, from *Enborn* in *Berkshire* to *Silchester* in *Hants* and *Berks*: and the sessions, upon an appeal, confirmed that order. Special case stated—The pauper *Jane Moor* was sent some time in *July 1764*, together with one *George Wise*, by an order of removal under the hands and seals of two justices, from the parish of *Newbury* to the parish of *Enborn*, by the names of *George Wise* and *Jane* his wife: and there was no appeal from the said order, to the next or any other sessions. Afterwards, the parish of *Enborn* finding that *Jane* was not the wife of *George Wise*, removed her, by original order, by the name of *Jane Moor*, single woman, from the said parish of *Enborn* to the parish of *Silchester*, under an order of two justices: from which order, the said parish of *Silchester* appealed. And upon hearing the appeal, it was proved "that the said *Jane* never was married to the said *George Wise*." Therefore the sessions affirmed the order of the two justices. A motion had been made by *Mr. Vansittart* (on the second *Tuesday* in last *Michaelmas* term) to quash these orders: and a rule to shew cause. *Sir Fletcher Norton* was now to have supported the orders; and said that if it had been *res integra*, he thought a good deal might be urged, to shew that they were right: but he acknowledged it to have

An order of removal to a parish, confirmed without appeal by such parish, concludes that parish against all the world. 2 Bur. Sett. Ca. 551, Hil. 6 Geo. 3, (Feb. 1, 1766) *Rex v. inhabitants of Silchester*.

been fully settled "that an order of removal to a parish, confirmed without appeal by such parish, concludes that parish against all the world." But Mr. *Scutz*, on the same side, attempted (and with some ingenuity) to maintain these orders; and urged the hardship of being precluded from controverting the truth of the fact upon which the prior order was founded; which fact the parish of *Enborn* had not sufficient time to inquire into, before the limited time of appealing was past; but which, as soon as such inquiry could be perfected, came out to be false. And he argued that this case was not within the general rule: for there had never been any adjudication of this woman's last legal settlement, nor had it ever been inquired into; she having been sent to *Enborn*, the place of *George Wise's* settlement, as his wife; which (in fact) she was not, but had a distinct settlement of her own. Sir *Fletcher Norton* acknowledged, however, that it had been established "that an order unappealed from, is conclusive." And the court were so clear in this, as a point settled, that they did not even hear Mr. *Morton*, on the side of the objection. They said that whatever the hardship might be in this particular case, or how doubtful soever this question might be if it was *res integra*; yet its being fully settled, was a reason for them not to depart from it now: for, that *stare decisis* was always a good rule; and never more so, than in cases of settlements of paupers, where it would make the utmost confusion if they should overturn settled determinations, which the justices of peace all over *England* had been used to look upon as the rules of their conduct in similar cases, and to act under the sanction and authority of them. If she was not his wife, it might have been controverted: but as they have neglected to appeal when they had a proper opportunity to shew it, they are estopped to say so now. And Mr. Justice *Aston* mentioned a case of one *Mary Broomhall*; where the parish of *Maidstone* having given a certificate calling her the wife of *Richard Burden*, they could not afterwards controvert it. *Per cur.*—Rule made absolute for quashing both orders.

Order bad where children removed with the mother to her husband's settlement, and said to be her not his children. 1 Bur. Sett. C1. 213, East. 16 Geo. 2, (May 16, 1745) Rex v. inhabitants of Normanton.

Two justices made an order for the removal of *Elizabeth* the wife of *Job Smith*, *John*, *Ann*, *Thomas* and *Mary* her children from *Repton* in *Derbyshire* to *Normanton* in *Leicestershire*, as the last legal place of settlement of *Job Smith*: and the sessions confirmed that order, generally. On *Friday* the 11th of *February* last, a motion was made, by Mr. *Eardley Wilmot*, to quash these orders: and the following exceptions were taken by him. 1st, The children do not appear, by this order, to be the children of *Job Smith*, but only the children of *Elizabeth Smith*: the words are "her children." 2dly, Their ages are not set out; nor any adjudication of their settlement. 3dly, A married woman cannot be removed to any place but the settlement of her husband: otherwise, it would amount to a divorce. But it does not here appear that the *Job Smith*, whose settlement is adjudged to be in *Normanton*, is the same *Job Smith* who is husband to *Elizabeth*; it not being said the said *Job*, but only *Job Smith*, generally. Mr. *Lloyd*, who now shewed cause, allowed the uncertainty whose children they were; *i. e.* who was the father of them: but proposed to send it back again

again to be clearly stated. As to the 3d exception—he said, that as only one *Job Smith* was mentioned, the court would understand it to mean the same *Job Smith*. The court answered, that it could not be sent back; for it was not a special order, but a general one: but as to the 3d exception—they declared they would intend him to be the same *Job Smith*. Therefore *Per Cur.*—(Mr. Justice *Wright* and Mr. Justice *Denison*, the only judges then in court)—The orders must be quashed as to the four children; and affirmed as to the woman.

Two justices made an order for the removal of *Eleanor* the wife of *William Hellyar* from *Symondsbury* in *Dorsetshire* to *Luffington* in *Somersetshire*: and the sessions, upon appeal, confirmed that order. Special case—About eighteen years since, one *William Hellyar* was married to *Mary Hembury* of *Curry-Rivel* in *Somersetshire*, spinster, at the city of *Bath*, by a person in a black coat and band; whom the said *Mary Hembury* apprehended to be a clergyman, but has since been informed that he was a layman. That the matrimonial ceremony of the church of *England* was duly read over; and a ring was properly made use of; and the same was performed in a private room in a dwelling-house; and not in a church or chapel. That in pursuance of such marriage, the said *William Hellyar* and *Mary* cohabited as man and wife for the space of nine or ten years; but have not lived together since. That on or about the 10th of *June* 1742, the said *William Hellyar* was regularly married to the said pauper *Eleanor* in the parish-church of *Symondsbury*, by a clergyman in holy orders, according to the form of the church of *England*, during the life of the said *Mary*, by virtue of a licence obtained by the said *Hellyar* for that purpose. And the sessions thereupon confirm the original order. On *Wednesday* 1st *February* last, a motion was made by Mr. *Gundry*, to quash these orders: and a rule was made to shew cause. 1st objection—It does not appear by the original order, nor by the order of sessions, that *William Hellyar's* settlement was at *Luffington*: which ought to appear, in order to make the removal of *Eleanor* thither, in the character of his wife, to be good. 2d objection—His marriage with *Mary Hembury* was a good marriage: consequently that to the pauper was null. Mr. *Henley* and Mr. *Gould* now shewed cause. As to the first exception—It is adjudged by the two justices “that *Eleanor's* last legal settlement was in *Luffington*,” and the sessions have not quashed this order. Therefore it stands: and it must be good as her original settlement; which it might be originally, and independently of *William Hellyar's* settlement. The order of the two justices does not speak of her as a married woman, but absolutely. So that this exception will not affect the order. As to the 2d exception—A marriage, in order to have a temporal effect, must be according to the ceremonies of the church of *England*. The case of *Haydon v. Gould*, in 1 *Salkeld* 120, is an express determination that a marriage celebrated by a person not in orders is ineffectual and void, and this, even in the case of a marriage between two dissenters: for that marriage (which was by a layman) did not intitle to administration. I do not comprehend the force of the di-

Order bad where the sessions do not determine whether a marriage be by a clergyman or not. 1 Bur. Sett. Ca. 232, (May 1, 1744) Rex v. inhabitants of Luffington.

distinction made in that case relating to the wife and children, "that perhaps they might intitle themselves, by such marriage, to a temporal right, though the husband could not." Besides that determination itself, in *Salkeld*, there is a case in *Swinburn* cited, where such a marriage was ruled void: and the manner and form of pleading is specified; which both shew the contrary to that distinction. As to *Wigmore's* case in 2 *Salk.* 432, where *Holt* says "that by the canon law, a contract *in verbis de presenti* is a marriage; and the spiritual court cannot punish for fornication."—In 6 *Mod.* 155, *Collins v. Jessat*, he says the direct contrary, viz. "that they are punishable by ecclesiastical censures, where the contract is *per verba de presenti*, if they cohabit before marriage *in facie ecclesiæ*." So that in *Wigmore's* case he can only mean what he here explicitly says with respect to the very parties themselves, that they could not release one another, or dissolve their own mutual agreement. But it is plain that the law does not consider these marriages as effectual to any temporal purpose. 1 *Siderf.* 13, Sir *Robert Pain's* case. And 2 & 3 *E.* 6, c. 21, shews that the parlia-

* See sect. 3. ment took the common law so; as appears by the * proviso therein. The
 † Confirmed statute of 12 C. 2, c. 33, † was made to confirm marriages made by jus-
 by 13 C. 2, tices of peace during the Usurpation. And 6 & 7 W. 3, c. 6, 7 & 8 W.
 c. 11. 3, c. 35, and 10 Ann. c. 19, are all confined to marriages by persons in
 holy orders. From whence it is plain that the parliament did not look
 upon marriages by persons not in holy orders to be binding. Indeed, as
 to dissenters—Their case may be different; as being virtually dispensed
 with, by the Toleration-act, from complying with the Common-prayer
 book in this respect. In 3 *Lev.* 376, *Hutchinson and Ux v. Brookebanke*,
 a prohibition went, and the plaintiff was to declare upon it, so that the
 law might be tried upon demurrer. *Salk.* 437, is S. C. But there is no
 case, where a marriage by a layman has been holden good. Indeed, in
 ejectment, cohabitation may be urged as an evidence of legal marriage:
Mr Gundry—contra, for quashing the orders, enforced his exceptions to
 them. 1st, This is an undue removal of *Eleanor* to *Luffington*, as the wife
 of *Hellyar*; when it is not adjudged that *Luffington* was his place of settle-
 ment. The order of sessions contains the whole of the case: and then says
 that the sessions, on the case as above stated, are of opinion so and so.
 This court can only judge upon the facts that they have returned up to
 them. 2dly. The gentlemen say "that no marriage is good, unless by
 a priest in holy orders." But *Wigmore's* case shews that the contract *in*
verbis de presenti is the essence of marriage. They would infer from the
 acts of parliament, "that the legislature have always looked upon these
 marriages as null and void." But 2 & 3 *E.* 6, is not to the purpose:
 and 12 C. 2, c. 33, was made for quieting the people's minds. The other
 acts of parliament rather countenance them, than otherwise. Indeed there
 * See 6 W. 3, is a proviso in one of them "that they shall not be of * greater force than
 c. 6, sect. ult. they were before." But, upon the whole, these public acts are a tacit
 & penult. acknowledgment of their validity. The case of *Tarry v. Browne*, in 1
Siderf. 64, is for me—All that the court say is, that "if the marriage
 had been by force and duress, it had been void and no marriage at all."

in the case of *Haydon* and *Gold*, it seems to be admitted that they might be intitled to all temporal rights; though not to spiritual. *Bunting's* case, in *Moor* 169, proves that the contract makes the marriage: and the second marriage made after a contract *per verba de præsenti* was held not only voidable, but absolutely void. The husband could not marry again, without being liable to be indicted. 3 *Inst.* 88. Besides, it does not appear that the person who married *Mary Hembury* was not in holy orders. She apprehended him to be so, and was only informed since, that he was not so. This is the lowest interest that a woman can derive from matrimony. Lord Chief-justice *Lee* held the second point to be of great consequence, and to require great consideration: but he thought the case very imperfectly stated. As to the person in a black coat and band, &c. —It is only evidence of the circumstances of the first marriage: whereas the sessions should have determined whether the marriage was by a clergyman in holy orders or not. But this they have not done. Mr. Justice *Chapple* too held the state of the case to be imperfect. Therefore, for the imperfection of the state of the case—Both orders were quashed. Mr. Justice *Wright* and Mr. Justice *Denison* were silent. Mr. *Henley* hinted at the sending the orders down again to the sessions, to have the case more completely stated. But *Lee* Chief-justice said—Both orders must be quashed.*

* N. B. They certainly were not quashed on the merits: and no particular reason was given why they were quashed at all. It does not appear to me, why the court did not refer the case back to the sessions, to be more fully stated; as has been done in numberless other instances.

Two justices made an order for the removal of *John Hays*, aged ten years, *Thomas*, aged eight, and *Matthew*, aged three years, the three children of *Anne Hays*, widow, from *Aylesbury* in *Buckinghamshire* to the parish of *St. George Hanover-Square* in *Middlesex*: and, upon appeal, the sessions confirmed that order. The case states that the woman was born at *Aylesbury*: that she was married to *Thomas Hays* an *Irishman*, whose settlement cannot be found, and who told her that he had none; that these three children were born of her, in lawful wedlock, in *St. George's Hanover-Square*, where her said husband was a day-labourer; and the went a charring. Note—It does not appear that the woman had gained any settlement any where for herself: nor was it positively stated that her husband had none. On *Saturday* the 18th of this month, a motion was made by Serjeant *Hayward*, to quash these orders: and a rule was made to shew cause. And upon cause being now shewn, he argued that where no settlement of the father is to be found, the children shall be sent to the settlement of the mother. To prove this, the following cases were cited by him and Mr. *Bennè*, who was on the same side with him. *M. 12 Ann.* between *Dunsfold* and *Winsborough Green*; and *M. 3 G. 2, B. R.* between *St. Giles's* and *St. Margaret's Westminster*; and *H. 12 G. 1, Rex v. inhabitants of Westram*. And the mother's settlement must be taken, they said, to be at *Aylesbury*; since she was born there, and no subsequent

Order of sessions affirmed when the facts are not sufficiently stated. 1 *Bur. Setv.* *Ca. 278, Trin. 21 & 22 Geo. 2, (June 28, 1748) Rex v. inhabitants of St. George Hanover Square.*

settlement appears: for *de non apparentibus et non existentibus eadem est ratio*. A woman's settlement is only suspended during marriage with an unsettled husband, by the case between *Stretford and Norton*, *H. 12 G. 2*. But this woman's husband is dead: she is stated to be a widow. And children born in lawful wedlock are to be sent to the place of the mother's settlement; and not to be sent as vagrants to the place of their birth. To prove which, the case between the parishes of *Morton and Hanway*, *H. 1 G. 1*, was cited. See *Fortescue's Reports* 217, *Hanway and Maunton*. Sir *John Strange*, of counsel on the other side, for *Aylesbury*, said that the facts stated were not a foundation strong enough for the gentlemen to raise their law upon. And Lord Chief-justice *Lee* said, this is no case at all: for it is not stated "that the husband had no settlement;" nor "that the woman's settlement was at *Aylesbury*." It does not appear that the husband had no settlement: it is only stated "that the woman said he told her so." It should have been stated as a fact "that he had none." Sir *John Strange* said that if it had been so stated, he could have shewn, that the children, though legitimate, would have been settled where they were born. See *Cartkew* 433, *Whitechapel v. Stepney*; and 3 *Salk.* 257, *Luckington v. St. Augustin's*. *Per cur.* as the facts are not sufficiently stated, the rule must be discharged. The rule was discharged; and the orders affirmed.

Where the expression of the sessions is not absolutely clear and explicit, they shall be intended to have done right.
2 Bur. Sett. Ca. 453, Hil. 31 Geo. 2, (Feb. 13, 1758) *Rex v. inhabitants of Mayfield*.

Mr. *Aston* and Mr. *Burrell* shewed cause against quashing an order of sessions. Two justices had removed *Robert Furner* and *Mary* his wife, from *Mayfield* to *Horstedcaines*, (both, in *Sussex*;) and the sessions, upon an appeal, discharged their order. Which order of sessions Mr. *Russell* and Mr. *Norton* had moved to quash. The order of sessions states no case at all. It is expressed only thus—"Upon the appeal of, &c. from an order, &c. for removing of *Robert Furner* and *Mary* his wife, from, &c. to &c. and upon hearing of counsel on both sides; it is ordered by this court, that the said order or warrant of the said two justices of the peace be discharged, as to the said *Mary*: and by this court, it is discharged accordingly." The counsel who moved to quash this order of sessions objected "that this amounts to a divorce of the husband and wife." Note—The fact was, that it appeared to the sessions; that she had a former husband: who did not appear to them to be dead. (And Lord *Mansfield*, upon the original motion, suspected "that the sessions might think her not to be his wife.") The counsel who shewed cause against quashing the order of sessions observed, that even if she was really his wife, yet she might have hired herself to a service, when sole; and if so, her marriage would not dissolve the contract. However they proposed that it should go back to be more fully stated: which the other side were ready to consent to. But Mr. Justice *Denison* did not think it necessary: for the sessions had not called her his wife: nor can we take it for granted, that she was so. And we must intend them to have done right. They only recite the order of the two justices, which indeed calls her, "his said wife:" but when the court of sessions come to use their own words, they call her, "the

“the said *Mary*.” So that upon the face of their order, they plainly took her not to be his wife. And I don’t know that the justices are obliged to state the case specially. Mr. Justice *Wilmot* concurred; and declared that it was extremely plain to him, that the justices at sessions did not take her to be his wife: for though they recite the original order which removes her as the man’s wife, they drop the word “wife,” and only call her “the said *Mary*,” in their own order (of sessions.) And, as they had jurisdiction, we ought to intend that they did right. Rule discharged: and the order of sessions affirmed.

Two justices made an order for the removal of *Francis Ailmer* under the age of ten years, *Rachael Ailmer* under the age of eight, and *John Ailmer* under the age of five years, from *Wells* next the sea to *Oulton*; and upon appeal the sessions confirmed that order. Case.—*John Ailmer* their father was settled in *Oulton*; and the children were born there: their mother had a copyhold messuage and lands in *Burnham Overy* in her husband’s life time; and after her husband’s death removed thither with her said three children, and dwelt in the said house, and dwelt and continued there with them three months and upwards; and then sold the said house and lands. *N. B.* This special case was not stated upon the order of sessions; which did not state any case at all, but only affirmed the original order of the two justices generally, “upon hearing all that was and could be alleged and said by counsel and witnesses on both sides, and full debate of the matter.” Whereupon the counsel for *Oulton* excepted, at the sessions, to their refusing to state the case specially: and the exceptions were returned up together with the orders; and are as follow. “Whereupon immediately, sitting the court, *J. Jeremy*, esq. and *J. Howes*, esq. of counsel with the inhabitants of *Oulton* aforesaid, delivered into court their exceptions, in writing under their hands, to the above written order of court: which said exceptions were then read and received by the court, and are hereunto annexed. “We humbly except to the judgment given by this court, that, &c. as erroneous: for that the said order of two justices ought to have been discharged; because it was proved, &c.—And we having desired the court to find the matter specially, and the court having denied so to do, we therefore humbly except, &c. as erroneous; for that the said order of two justices ought to have been discharged; for that the said three children removed gained a legal settlement in *Burnham Overy*, in right of their mother’s having the said messuage and lands in *Burnham Overy* aforesaid, and inhabiting in the said house, and the children removed also dwelling in the said house with their mother three months, and then the mother sold the said house and lands.” *J. Jeremy. J. Howes.* This was under-written—“Read and received in court 25 July, 1734:” and signed by the clerk of the peace. “*Berney.*” On Tuesday 29th of April 1735, a motion was made to quash this order of sessions confirming the order of two justices, together with the said original order: for that the mother’s going to settle upon her own copyhold in *Burnham Overy* gained a settlement there for her children as well as for herself. So, in the case

Sessions are not obliged to state a case specially. 1 Bur. Sett. Ca. 64, Mich. 9 Geo. 2, (Nov. 7, 1735) Rex v. inhabitants of Oulton. 2 Sess. Ca. No. 179, S. C.

between the parishes of *Paulspury* and *Woodend*, in *M. and H. 13 G. 1, B. R. A.* had a wife and child and lived fourteen years in *Woodend*; and then died: the wife and child, after the death of the father, went to *Paulspury* into the wife's own copyhold house, and lived two years there. The court agreed that the mother gained a settlement at *Paulspury* as well for her child as for herself. So likewise in the case between the parishes of *St. George Southwark* and *St. Catherine* near the *Tower*, in *M. 1 G. 1*, the father being settled in *St. Catherine's*, and having a wife and six children, died: after the death of the father, the widow and her six children went to live in *St. George's Southwark*, and lived there four months in a rented tenement of *12l. per annum*.—The court held that the mother gained a settlement as well for her children as for herself. At the time of this motion, the order of sessions was not in court. On *Thursday 1st May 1735*, it was produced. Lord *Hardwicke*.—To what purpose should we make a rule to shew cause why this order of sessions should not be quashed? for, I do not see that we can ever make such a rule absolute; because this that is alledged to have been the real state of the case, does not appear to us to be the fact. And how can we take it for granted, that it was the real fact? To be sure, it is a thing very much to be censured and discommended, when an inferior jurisdiction endeavours to preclude the parties from an opportunity of applying to a superior jurisdiction. But still we must go according to the due course of law. Mr. *J. Page*.—I never knew an instance that this court could force the justices, against their will, to state a special case. Mr. *J. Lee*.—This alledged case, supposing it to be the truth, is directly contrary to the determination of that of *St. George's Southwark*. Therefore I very much incline to come at it, if I can. The court hired to the counsel who moved to quash the order of sessions, that they might look narrowly into the order, to see if they could find any defects in form: and in that view, it was at present adjourned. The day following, the counsel for quashing the order moved for a rule to shew cause why the return should not be amended; and the state of the case inserted by the clerk of the peace in the body of the order of sessions. The court gave him a rule to shew cause. On *Thursday* the 12th of *June*, cause was shewn against this method of putting the state of the case in the body of the order: and the counsel for *Wells* said, The clerk of the peace is doubtful whether he can do it, against the will of the justices at sessions. Lord *Hardwicke*.—Here is plainly a determination contrary to law. The right way would be, either that it should go back to the sessions, or that it should be referred to a judge of assize. However, at present, a rule was made upon the clerk of the peace, and upon the parish of *Wells*, for them to shew cause why the return should not be amended, as above. On the last day of *Trinity* term 1735, 8 & 9 G. 2, the counsel for quashing the order moved to make the above rule absolute.—To which the counsel for the clerk of the peace had no objection, if the court thought that he might do it. But, the rule to shew cause appearing to have been before enlarged, nothing was taken by the present motion: but the rule stood enlarged to the next term. On *Friday 7th November*

November 1735, the counsel for the parish of *Wells* argued that the return is perfect and complete: it wants no amendment, nor can receive any. The justices have executed their authority: they can not resume it again. These exceptions are only the allegations of counsel; and no part of the order. The clerk of the peace has no authority to insert this case. Lord *Hardwicke*.—I do not see what it is possible for the court to do in this case, without consent. Here is no consent: so far from it, that, on the contrary, the parish concerned in interest opposes it. Here is an order of removal made by two justices; an appeal therefrom; and a general order, on that appeal, for confirmation of the order of the two justices: the counsel at the sessions except to the order of sessions in the words of a bill of exceptions; and state the fact. If the fact be true, the ground of the exceptions is right: for it has been often holden in this court, that a child, after the death of the father, may gain a settlement under the mother, as well as it might before under the father. But the exceptions set forth, “that the court of sessions refused to state the matter specially.” How then shall we do this that is now desired of us, without their consent, even though the clerk of the peace should consent? It does not appear to us, that the fact alledged is true. It is only the allegation of counsel: or perhaps there might be evidence given of it, and the sessions might not believe the evidence. This is not in the form of a bill of exceptions though it be in the words of one. * If a bill of exceptions will lie, there is then a proper method to come at the right and justice of the matter. The court have ordered amendments in point of form: but what is now prayed, is an amendment in point of substance, contrary to the opinion of the court below. Mr. *J. Page*.—The consequence of this amendment would be, to bring the fact only alledged by counsel at sessions, into this court to be determined here. I do not know that ever this court inquires into the facts upon which justices have determined: and they themselves have stated none; but have adjudged generally. This would be, to bring the facts to be examined here; which do not appear to have been admitted as the facts by the sessions, though they are alledged by the counsel. The sessions might not perhaps agree this to be the fact, notwithstanding the opinion and allegation of the counsel. Mr. *J. Probyn*.—This court can take no notice of any thing but the order. I remember a like case in the last year of the late king, where the original examinations were returned up with the order: but the court said they could take notice of nothing but what was contained in the body of the order. The present case is less strong: for this is only the allegation of counsel; there, the original examinations were returned up hither. Mr. *J. Lee*.—The court were in hopes of a consent, when they made this rule. But as it is opposed, instead of being consented to, there is nothing clearer than that we can not grant this motion; which amounts, in effect, to a rule upon the sessions to oblige them to state the facts specially: which would be going very much out of the way. If there be any method for that (as I have heard it said “that there is”) it must be by way of a bill of exceptions †: and there is a proper writ to oblige the justices to set their seals to it, in case they re-

* But see the following case a resolution “that it will not.”

† See the following case.
fusa

ful to do so. Per cur. The last mentioned rule was discharged. Afterwards, on *Saturday 7th February* following, upon Mr. *Denison's* motion, a rule was made to confirm the orders, unless cause should be shewn, to the contrary, before the last day of the term; two terms being elapsed since they came in, and nothing done upon them.

A bill of exceptions will not lie upon a summary proceeding before justices. 1 Bur. Sett. Ca. 77. East. 9 Geo 2. (May 26, 1736) Rex v. inhabitants of Preston upon the Hill.

Two justices made an order for the removal of *Mary, Martha* and *John*, the children of *Thomas Harrison* deceased, from the township of *Daresbury* to *Preston* upon the *Hill*: and upon appeal to the sessions, they confirmed the said order, generally; not caring to state any special case in their order. A motion was made on *Saturday 7th June 1735*, to quash these orders: which came before the court upon a bill of exceptions containing a special state of the case, as follows—Exceptions to the judgment of the court of quarter-sessions, on the confirmation of the above order. On the evidence of all the witnesses; it appeared that *Thomas Harrison*, the father of the children, about twenty-two years ago was licensed by the order of the diocese of *Chester* to be school-master of the free grammar-school of *Daresbury*, and at the same time became clerk of the parochial chapel of *Daresbury*, and officiated in both capacities from that time to the time of his death, which happened in *April* last; and for fourteen or fifteen years of the latter part of the time, resided in the said township of *Daresbury*; (though it did not appear in evidence, how he was nominated or appointed, or that he was licensed to the clerk's place :) and it appeared that the children had gained no settlement for themselves. Whereupon the court was of opinion, that the said *Thomas Harrison* gained no settlement thereby in *Daresbury*: which the inhabitants of *Preston* upon the *Hill* humbly except to, and pray they may be received. And accordingly the said exceptions were received and ordered to be filed by the court: and thereupon Sir *C. D. Bart.* and *J. M. Esq.* two of the said justices, at the request of the inhabitants of *Preston* upon the *Hill*, sealed this bill, sitting the court aforesaid, the 16th day of *July* in the eighth year of his present majesty's reign, at *Nantwich* aforesaid. Upon this motion, a rule was made to shew cause. And upon shewing cause, the single question was, whether a bill of exceptions would lie, in this case, to the court of quarter-sessions. It was argued on *Monday 17th November* last: when Lord *Hardwicke* thought it a matter of such consequence, that he proposed having it set down in the paper for further argument; which was accordingly done. And now (upon the second argument) the court delivered their opinion: in which opinion, the arguments of the counsel at the bar are so fully discussed, that I have chosen to omit them, to avoid being thought too tedious. Lord *Hardwicke*.—This is a case of great consequence: and there may be very great inconveniences on either side. It has been much wished that a bill of exceptions would lie to the justices at their sessions; because otherwise it may sometimes happen that they may determine in an arbitrary manner, contrary to the resolutions of the courts of law: for if the justices will not state the facts specially (though requested to do so) when the matter is doubtful, this is a very blameable conduct in them;

and

and it is to be wished that it might be avoided. On the other hand, there may be very great inconveniencies arising from the abuse of bills of exceptions : and this matter of the settlement of the poor, which ought to be rendered cheap and speedy, may by such means be rendered dilatory, expensive and burthensome. I have heard that the money spent about determining these settlements would go a great way towards the maintenance of the poor : and this method would greatly increase the expence, were it to be put in practice in every case where any party thought fit to ask and insist upon it. In order therefore to come to the proper determination of this point, we must consider it on the statute of *Westm. 2, c. 31*, and the authorities and resolutions upon that statute. There has been no determined case that warrants the court to say that a bill of exceptions will lie in the present case. If a bill of exceptions would lie, I do not see but this bill is proper enough, as to the form of it : the evidence and the opinion of the court are stated : and these two justices who have sealed it have agreed this to be the evidence ; and the exceptions are taken to the consequence of law arising from it. But notwithstanding that, I am of opinion that a bill of exceptions will not lie in the present case. Consider what the words of the statute of *Westm. 2, c. 31*, are, *Cum aliquis implacitatur coram aliquibus justiciariis, proponat exceptionem, &c.* And therefore the observation that has been made at the bar upon the word "*implacitatur*" is material, "that it must be such a proceeding as in construction of law is an impleading of the party." Lord Coke, in his 2 *Inst.* 427, says, "This act doth extend as well to the demandant or plaintiff as to the tenant or defendant, in all actions real, personal and mixt." He does not seem to have any apprehension that it can be carried further : he says nothing of criminal or summary proceedings. And though he has no negative words, yet he seems to intimate that it lies in those cases only which he has mentioned. There is no case, ever since the statute, that can support a determination that it does lie in any other cases. Indeed there is an expression in *Lambart* * (from *Morrow*) "that it does lie to * See Lib. 4. justices of peace upon indictments." But that is not known in practice, c. 13. nor authorized by the judicial resolutions of any court. In Sir *Hen. Vane's* case, the indictment was for treason ; but it is there resolved that a bill of exceptions does not lie in any criminal cases at all ; but only in actions between party and party. 1 *Levinz.* 68. and 1 *Siderf.* 84, S. C. where the words are "That the statute of *W. 2, c. 31*, which gives a bill of exceptions, does not extend to any case where prisoners are indicted at the king's suit : for it intends to remedy the over-ruling the evidence, in civil pleas between party and party only." And *Kelcyng* 15, S. C. reports the same resolution, that it extends only to civil causes, and not to criminal ; and adds, "And the intention never was to give such persons liberty to put in bills of exception : for then there would be no trials of that nature ever dispatched in any time, if every frivolous exception, which a prisoner would make, should be drawn up in a bill of exceptions." It has been said, that it would be strange that such an advantage should be allowed to the party in case of a two-penny property, and should not be

allowed in a case where life is concerned. But there are many cases, where the same advantages are not allowed in cases of life, which are allowed in cases of property only. For instance, a criminal, in a case of life, is not allowed counsel, in the course of his trial, upon matters of fact: neither can he have a writ of error without the leave of the crown. This sounds very harsh: but the course has been constantly so, in both these points. And I dare say no-body had ever any apprehension that a bill of exceptions would lie in a capital case. If it would, we should have it from every prisoner at the *Old Bailey*: and very few criminals would have failed to attempt it, for the sake of the delay with which it would be attended. However hard therefore this course may seem, yet for the expedition of justice, and because the law esteems the judges to be of counsel with the prisoners, it has always been submitted to. I take it to be settled, that no bill of exceptions will lie in a criminal case: though I do not know that there has ever been any direct judicial and absolute determination to that purpose. I therefore give no opinion as to that point; nor is it properly before us. Lord *Raymond* doubted of it in the case of *Bunts*. I was of counsel in that case. It was in *Hil. 2 G. 2.* I was then attorney-general. It was an information for a libel: (for publishing one of *Mist's Journals*.) A bill of exceptions was tendered. Lord *Raymond* seemed to declare an opinion, "that a bill of exceptions would not lie in a criminal case." To avoid difficulties, I consented (as there had been other convictions) to withdraw a juror. Lord *Raymond* there mentioned the cases of informations in the *Exchequer*. But they have always been taken as suits for the king's debts. In the *Exchequer* it has been allowed; and is the practice in suits by the crown: but all those proceedings which have been insisted on at the bar are taken to be the civil suits of the crown. Informations there for duties are so: and they are only for the single value. Then came the practice of bringing *devenerunts* for the penalty; which was originally a civil suit, and was anciently called the king's action of trover. Formerly, the king recovered only the single value, though it was by way of information. Since that, subsequent acts of parliament have added the forfeiture of the triple value: but still they have gone the old way, and observed the same rules. I do not know that they have been esteemed criminal prosecutions in any other courts. However I give no opinion upon that matter: for it is not similar to this case. This is the case of an appeal to the quarter-sessions, and in a point relating to police and government. Their determination is final, as to matters of fact; though not as to matters of law. I know no instance where it has been imagined that a bill of exceptions will lie upon a summary proceeding. If it will lie in one case of a summary proceeding, it will in another. And what would be the consequence of that? it would hold equally, in cases of summary convictions; since summary convictions are in the same case as this summary proceeding: and it would introduce into them much delay and expence; which are the two evils meant to be avoided by the institution of summary proceedings. If a bill of exceptions should lie to the sessions, so it would also to the two justices. But no-body ever imagined

gined that it would lie to their judgment. This case is a great deal stronger than the case of convictions; because the proceedings here are not of record. And that is the reason why they needed not to be inrolled in *Latin*, pursuant to 36 *Edw.* 3, c. 15. The general rule was, "that where the proceedings were of record, there it was necessary that they should be in *Latin*: where they were not of record, there it was not necessary to be in *Latin*." This is merely an exercise of authority of the justices by way of order, made on hearing evidence of the facts *viva voce*. A writ of error not lying, is one of the strongest reasons why a bill of exceptions should not lie: for, the bill of exceptions cannot (any more than the writ of error) be made use of in the same court to which it is tendered. In the case of bills of exceptions to evidence on trials at bar, they do not come to be determined in the same court. In the case of *Truro*, where there was a bill of exceptions upon a trial at bar, a writ of error was brought, to reverse the judgment. And I take it that a writ of error is always in such case brought, and the bill of exception goes up with that. And this arises from the words* of the statute, which are very material;—"And if the king, upon complaint made of the act of the justices, cause the record to come before him;" (that is, upon complaint of the judgment of the justices:) and all writs of error do complain of the judgment of the justices. But a *certiorari* does not complain of the judgment of the justices, in the least. This strikes me very strongly; and shews that a bill of exceptions will not lie upon a *certiorari*. The case of *Liverpool* in the petty bag, *Mich.*

* See W. 2, c. 31, Et si forte ad querimoniam de facto justiciariorum venire faciat Rex recordum coram eo,

11 *Ann.* the queen against the corporation of *Liverpool*, was between four and five hundred years after the making the statute of W. 2, in 13 *Edw.* 1, but that was a proceeding quite at common law: and if it had come to an issue, it must have been delivered into court *per manus cancellarij*, who is a judge within the meaning of the statute. But the justices at quarter-sessions are not within the description or intent of the statute. The observation made by the counsel for supporting the orders, "that the justices at sessions are judges of fact as well as law; that they are jury as well as judges; and that it is in their breast only, whether to believe or disbelieve the evidence;" is very material. And who is to take upon himself to say what they believe of the evidence; and what they do not believe? In the common case of bills of exception tendered to the judges, the jury alone are the proper persons who would be to consider whether they believe the evidence, or not: the judges have nothing to do with the belief of the evidence; they are not to determine upon the credibility of the evidence, but upon the consequence of law arising from it. But here, suppose six of the justices believe the evidence, and two of them do not believe it, are the two to conclude the six, as to the belief of the fact? Where the justices specially state the fact, it is the act of the whole court; and it must be done by the majority: but here two only out of the whole number have sealed the bill of exceptions. Therefore upon the act of parliament itself, upon the determinations on this head, and upon the consequence that may follow, I am of opinion that the order be affirmed; abstracted from any regard to the bill of exceptions, which does not, I think, lie in the case

now before us. Mr. J. Page.—This is quite a new case: and I think it is neither within the words or intent of the act. Consider what mischief may arise. If a bill of exceptions lies in all these cases of summary jurisdiction, it is in a great measure putting an end to the acts of parliament which give them. The acts which give this jurisdiction intended that points of settlement of poor persons should be determined as soon, and with as little expence, as possible. But in this way of admitting bills of exceptions, the expence would be as much as would be sufficient to maintain the poor; and the delay would be so long and tedious as to make the mischief much greater than could arise from the other construction of not admitting them in these cases. Neither do I know how the bill of exceptions can come hither. Here is no writ of error: and I do not know that a *certiorari* will remove the bill of exceptions. And what can this court do in a point of fact? Suppose the justices to differ from each other in their belief of the facts; how can this court try which of them believe right? If we could meddle at all, it must be by directing an issue: and then there might be a bill of exceptions upon a bill of exceptions. A bill of exceptions cannot be tried and determined by the same court, to which it is tendered: even upon a bill of exceptions at the assizes, the matter must be rectified by a superior court. So that I do not know where there would be an end of it. And the expence attending it would be greater than the matter in question would bear. Was there ever a writ of error or a bill of exceptions brought upon a determination of a court of conscience? And yet there is an impleading, though indeed not of record. If a bill of exceptions should lie here, it would as well lie to the determinations of commissioners of excise and other summary jurisdictions, as to this; and it would lie as well to the two justices who make the original order of removal, as to the sessions. I concur with my lord's opinion "that the order ought to be affirmed; and that no such bill of exceptions will lie." Mr. J. Probyn.—This must be considered as a jurisdiction given by act of parliament, and not a proceeding at common law. Here are no pleadings upon record. The proceedings of the justices are in a summary way: they are judges of the credibility of the evidence, as well as judges of the law which arises upon that evidence. Therefore this case differs from those cases where a bill of exceptions is tendered to those courts who are judges only of the law which arises upon the evidence. Upon trials, the jury ought not to have any evidence laid before them, but what is proper: but here the justices themselves are judges of the evidence. Here, the foundation of a bill of exceptions is taken away; because we cannot say what they believed concerning the fact. Some might believe, and some disbelieve the witnesses: so that the same judgment would be right in some, and wrong in others. We can only judge upon the law, admitting the fact to be one way or the other. If a bill of exceptions will lie to one summary jurisdiction, it will likewise lie to another. These summary jurisdictions are given to gentlemen in the neighbourhood, who are supposed capable of knowing the facts and the credibility of the witnesses. Their determination is certainly final as to the facts;

and

and I do not know whether it was not meant to be so upon the law too; (though indeed the jurisdiction of the superior courts cannot legally be taken away but by express words.) And no bill of exceptions having ever been brought in a case of this kind, is a strong argument, with me, to believe that it has always hitherto been thought, "that by law it could not be done." I will not go over the reasons that my lord has already given, lest I should lessen the weight of them by my repeating them. But I will say, in general, that since this method would render the determination of settlements more expensive, as well as more tedious; and since the other construction has been always submitted to; I concur with the opinion "that the orders be confirmed." Mr. J. Lee.—This is a case which is attended with very odd circumstances. It is a case, as to material exceptions, the weakest that can arise upon the act of parliament; because it is an exception to the judgment of the justices upon the whole case: if it had been to any particular point, it had been stronger. It is certain, that the intention of the statute of W. 2, c. 31, is, that the bill of exceptions shall be allowed, to the end that the matter may be stated in writing, when it does not appear upon the roll. But when the whole appears upon the record, then there is no occasion for the bill of exceptions; because the whole matter will appear to the superior court. This is an exception for not having stated the facts: and if the real truth of the case be stated upon the bill of exceptions, I should not have been of the same opinion with the sessions, upon the facts. But we are to give our opinion "whether a bill of exceptions lies to the justices at their sessions, or not." And I am of opinion "that it does not lie." There is a case in 2 Lev. 237, 238, in which it was argued that there are two ways of taking advantage of a bill of exceptions; one, by writ of error; the other, in arrest of judgment. There is no determination indeed upon that point: though the court said "that the precedents cited were good proofs that it might be used upon a writ of error, but did not prove that it could not be made use of by motion in arrest of judgment." However, they gave no positive opinion as to this point. I take it to be now settled, and that it is the established method, "that it must be by writ of error." In the case of *Truro*, there was a writ of error brought; and the bill of exceptions went up with it: in the case of lord *Barrington*, there was a bill of exceptions before the judge of *nisi prius*; and a writ of error was brought afterwards to the House of Peers. The true method therefore I take to be, that there must be a writ of error, upon the exceptions specified in the bill: for, the writ of error is founded on that. But there can be no such thing in summary proceedings before justices. And I do not know any authority that the court have, to enquire concerning a bill of exceptions, unless it comes to them by a writ of error from the court who have over-ruled the exceptions. Lord *Coke** specifies actions real, personal* 2 Inst. 427. and mixt; and mentions no other. Besides, a bill of exceptions tendered to the sessions upon the merits of the case is inconsistent with the statute, which makes their determination final as to the merits. It seems to me to be a contrivance, by a method in the nature of a writ of error, to have
an

* And see Sir
T. Jones 116,
S.C. but
without any
hint of the o-
pinions of the
court upon it.

an appeal from their determination. I think such a bill of exceptions cannot be maintained. But yet I am not willing to affirm an order which I think is a wrong one, if the fact really be as it is stated in the bill of exceptions. Lord *Hardwicke*.—There is that case of *Enfield v. Hills*, in 2 *Lev.* 236, which my brother *Lee* has mentioned*. But it has been long ago settled, “that a bill of exceptions cannot be taken advantage of by way of motion in the same court.” I remember a case from the House of Lords in *Ireland*, where it was so determined. The court of Exchequer in *Ireland*, (out of which court the record of *nisi prius* went,) had entered into the matter, upon a bill of exceptions tendered to and sealed by the judge of *nisi prius*. The lords held it to be an irregular proceeding; and that it ought not to have been taken notice of by the same court: and so the judges held, who were then present. And the judgment of the court of Exchequer in *Ireland* was therefore reversed. It is to be wished, if the fact be in truth so as it is stated in the bill of exceptions, that some method could be thought of to set it right. But that cannot be done without consent: we cannot judicially take notice “that this was the fact.” But perhaps we may hear of this case again: it may be cited to us as an authority for establishing the opinion which the sessions have here determined upon. To prevent which, I think we should specify the particular reason of our determination in our present rule. Therefore let the order be affirmed, with this reason inserted in the rule.—“The court being of opinion that a bill of exceptions doth not lie in this case.” *Per cur*—Rule accordingly: viz. *Wednesday* next after one month from the feast day of *Easter*, in the ninth year of King *George* the Second.

Co. Pal. of Chester. } Upon mature deliberation had here in court, it is
The king against } ordered that the order of sessions in this cause be af-
the inhabitants of } firmed; the court being of opinion “that no bill
Preston on the Hill. } of exceptions lies in this case.” On the motion of
Mr. *Wilbraham*.

The sessions
must state the
fact itself, not
evidence of
the fact. 1 Bur.
Sett. Ca. 120.
Trin. 11 & 12
Geo. 2, Rex
v. inhabitants
of Martley.

This was an order of sessions confirming an original order of two justices made for removing *Stephen Brydges*, musician, and his wife and children, from *Callow* in *tiertfordshire* to *Martley* in *Worcestershire*. They were all idle, dissolute, and vagrants, and had been so all their lives, and never gained any settlement any where: and the places of their births seemed very uncertain. However, the sessions had not sufficiently stated the facts: they had stated only the evidence. The court therefore recommended it to the counsel on both sides, to consent “that it should go down again, to be better stated.” They supposed it to be the intention of the sessions, to state the facts for the opinion of this court upon them. But this court could not judge of the place where the paupers were born. Special orders of sessions were considered, they said, in the nature of special verdicts; which are not to state the evidence of the fact, but the fact itself. The counsel could not consent without authority: but they afterwards had authority to consent; and both orders were accordingly quashed by consent,

without prejudice to either party, in order to have the matter more fully stated as to the facts. The rule was made upon *Saturday* next after the octave of the *Holy Trinity* 11 G. 2, and both orders were thereby quashed, “without prejudice to either of the said parishes, in order that the merits of the settlements of the said paupers may come more fully in judgment before this court: and by the like consent it is further ordered, that the inhabitants of the parish of *Martley* shall accept of a new original order for the removal of the above-mentioned *Stephen Brydges* and his family from the said parish of *Callow*, and not remove them back to the said parish of *Callow* till the merits of the said settlement be determined. By consent of Mr. Solicitor-general for the inhabitants of *Mortley*. By consent of Sir *Thomas Abney* for the inhabitants of *Callow*.”

On *Thursday* 27th of *May* last, a motion was made to quash an order In orders of sessions discharging an order of two justices made for the removal of *Daniel Helliwell* with *Martha* his wife and seven children from *Heptonstall* made at an adjourned sessions it must appear when the original sessions were holden. 1 Bur. Sett. Ca. 88, Trin. 10 Geo. 2, (July 3, 1735) Rex v. inhabitants of *Heptonstall*. to *Errendon*, (both in the west riding of *Yorkshire*.) They discharged the order of the two justices, on proof (as they stated in their order) of the facts following; viz. *Helliwell* went by certificate from *Errendon* to *Wadsworth*; then was licensed to be clerk of a parochial chapel at *Heptonstall*; and resided a month at *Wadsworth* (*Wadsworth*, *Errendon* and *Heptonstall* being different towns in the same chapelry;) then removed to *Heptonstall*, and inhabited there five months; during all which time, he executed the office of clerk of the chapel there. The objection at first made to this order was, that nothing appears to give the pauper a title to a settlement, but a licence to be clerk of a parochial chapel: whereas a licence from the bishop will not gain a settlement, without a choice by the parishioners. But, now, upon shewing cause, another objection was made to this sessions-order; which was, that in the caption of it, the sessions are said to be holden on such a day by adjournment: but it does not appear when the original sessions were holden. The counsel who was to shew cause against quashing the order of sessions (*Mr. Strange*) said, he could have undertaken to have supported it upon the special matter. *Per cur.*—This is a fatal exception: the order must be quashed. The counsel for the order of sessions then made two objections to the *certiorari*: both which were over-ruled, as being quite immaterial. *Mr. Strange* then objected to the original order of the two justices. (1st,) It does not set out the ages of the children. (2dly,) These were certificate persons: and it is not said, that they were actually become chargeable. To which the counsel for quashing the order of sessions (*Mr. Abney* and *Mr. Denison*) answered, that the certificate was directed to another township, viz. to *Wadsworth*; and was left there: so that he did not come to *Heptonstall* by certificate from *Errendon*. And as to the other objection—*Errendon* is said to be the place of their last legal settlement; and it is therefore well enough. *Cur.*—That goes to all; and is an answer. Where a place is adjudged only to be the last legal settlement of the father, and the children are only sent thither in consequence of its being their father’s settlement,

ment, the ages of the children must be set out; because they may perhaps have gained a settlement for themselves, since: but it is not necessary to set out the ages of the children, where the justices adjudge the place to which they remove them to be the place of their own last legal settlement. The rule must be made absolute to quash the order of sessions. The order of sessions quashed: original order affirmed.

Sessions if once dropt and not adjourned cannot be resumed. 1. Bur. Sett. Ca. 293. Trin. 22 & 23 Geo. 2, (June 13th 1749) Rex. v. inhabitants of West Torrington.

Mr. *Wilmot* moved to quash the order of sessions quashing an order of two justices, for removing *John West* and *Anne* his wife from *West Torrington* to *North Thoresby*, (both in *Lincolnshire*.) The Record says—"Be it remembered that the general quarter-sessions of the peace of our sovereign lord the king was held by proclamation at *Kirton*, in and for, *Essex* on Monday the 9th of January, *Essex* and from thence adjourned to *Caister* in the said parts and county, to Wednesday the 7th, *Essex* where there was then no sessions held, pursuant to the said adjournment. And that at the general quarter-sessions of the peace of our said lord the king, held at *Horncastle* in and for *Essex* on *Essex* before *Essex* appeal to this court *Essex*." 1st objection, The sessions at *Horncastle* could not take it up at all, for want of jurisdiction; being held without adjournment. *Rex v. the inhabitants of Polsted*, H. 20. G. 2. B. R. 2d objection, The appeal is not made to the next quarter-sessions. Mr. *Hewitt*, contra—1st, The first sessions was holden at *Kirton*, was adjourned to *Caister*: but none was there holden. Then a sessions was held at *Horncastle*; at which last sessions, this order was made. But it does not appear that either the first, at *Kirton*; or the second, at *Caister*, was well holden. For it does not appear before what justices that at *Kirton* was holden. So that the last might be an original session, in point of law; the two former being null. Therefore the case cited (which I agree to) does not come up to this case now before the court. 2d, The same answer serves equally to this objection: viz. That if the first session at *Kirton* was not good, and none was holden at *Caister*; then this at *Horncastle* on Friday 13th January was the next quarter-sessions. Mr. *Wilmot* in reply—The Act of 36 E. 3, c. 12, expressly directs four sessions only to be holden in a year; viz. within the *Wits* of the *Epiphany*; within the second week of *Lent*; between *Pentecost* and St. *John* the baptist; and within eight days of St. *Michael*. The 12 R. 2, c. 10, directs one in each quarter of the year, at least. Then 2 H. 5, Stat. 1, c. 4, specifies the times of holding them; which are, in the first week after *Michaelmas*, in the first week after *Epiphany*, the first week after the clause of *Easter*, and in the first week after the translation of St. *Thomas* the martyr; and more often, if need be. This appears to be a general quarter-session holden at *Kirton*; and an adjournment from *Kirton* to *Caister* (where none was holden:) and the third, at *Horncastle*, mentions no adjournment from any former session. Lord Chief-justice *Lee* asked Mr. *Hewitt* if he had any case to shew that it was necessary, in a session only for the purpose of adjournment to name the justices before whom it was holden. To be sure, if the first session was well holden; the session was completed, if there was no adjournment of it from thence to *Horncastle*: and

and the case of *Polsted* is in point. [It is so: See it in 2 *Sir John Strange* 1263.] The rule to quash the order of sessions, and confirm the original order, was ordered to be made absolute, unless cause be shewn to-morrow. And no cause was then shewn.

On Monday next after five weeks from *Easter* 10 G. 2. (16th of May 1737) a rule was made, upon the motion of Mr. *Baldwin*, to shew cause why the order of sessions and also the original order made in this cause for quashing the original order made in the same cause, for removing *William Clarke* and his wife, *Elizabeth* and *Ann* their children, from *Heddingham Sible* to *Finchingfield* (both in *Essex*) should not be quashed; and why the last mentioned original order should not be affirmed. On Monday next after the morrow of *St. Martin*, 11 G. 2, (14th of November 1737) the original order made in this cause, for removing *William Clarke*, his wife, *Elizabeth* and *Ann* their children, from *Finchingfield* to *Heddingham Sible* was quashed, on the motion of Mr. *Baldwin*. And at the same time, the *certiorari* was quashed as to the four orders first mentioned in the return to it. The same day, a *certiorari* was granted, on Mr. *Baldwin's* motion, to remove all orders made by the justices of peace for *Essex* between the inhabitants of *Finchingfield* and the inhabitants of *Heddingham Sible*, concerning the settlement of *William Clarke*, his wife, *Elizabeth Clarke* and *Ann Clarke* his children. N. B. There was a great deal of confusion about this case: there being, in all, five orders; and no less than seven exceptions to them, some to one, and some to another. The first order was an order of two justices to remove these paupers from *Heddingham Sible* to *Finchingfield*. The 2d was an order of sessions reciting the first order, and that *Finchingfield* had appealed to them: and they adjourned the appeal to the next sessions. The third was an order of sessions referring the matter to the opinion of the judge of the next assizes: but without any particular continuance of the appeal. The 4th order was an order of sessions, made about a year after: which recited the order of two justices and the order of reference to the judge, and the judges opinion "that *William Clarke* had gained a settlement in *Heddingham Sible*;" and which discharged the order of the two justices, upon hearing the judge's opinion. The 5th order was an order of two justices, reciting all the former proceedings, and removing these paupers from *Finchingfield* to *Heddingham Sible*. The court were of opinion that the four first of these orders were not properly described in the *certiorari*; (there being a variance in the words "his" and "their" children.) The 5th order was well removed, being rightly described: but was given up as a bad one, being made whilst the matter was depending before the sessions. Therefore they quashed this last order of two justices, which was well removed; and quashed the *certiorari*, as to the four other orders which were not well removed by it, for want of being properly described. Memorandum. —Afterwards, the four orders were returned up, in obedience to the 2d *certiorari*. And Mr. *Baldwin* objected that the 3d of the before-mentioned orders, not having continued the appeal by a proper adjournment, but only referring it to the judge of assize, without reserving the

Sessions cannot take up an appeal if not continued by adjournment; notwithstanding a conditional reference to the next judge of assize. 1 Bur. Sett. Ca. 112. Mich. 2 Geo. 2. (Nov. 14th 1737) Rex. v. inhabitants of Heddingham Sible.

determination to themselves after they should know his opinion. This was a discontinuance of the appeal, and the sessions could not take the matter up again: and consequently, the fourth order (which discharged the original order) was a bad one. And Serjeant *Price*, who was on the other side (for *Finchingfield*) did not pretend to support it. *Lee*, Lord Chief-justice—The former is only a conditional reference to the judge of assize, without any continuance or adjournment. The latter, therefore, can't be valid. * *Per Cur.*—Order of sessions (the 4th of the before-mentioned five orders) quashed: and the original order (for removing the pauper from *Heddingham Sible* to *Finchingfield*) affirmed.

The quarter-sessions of a borough have no jurisdiction in an appeal from an order of removal. The appeal must be to the quarter sessions of the county.²

Two justices of peace for the borough of *Colchester* made an order to remove *John Grimwood*, *Jeremiah Grimwood*, and *Elizabeth Grimwood* the children of *Jeremiah* and *Elizabeth Grimwood* both deceased, from *St. Giles's* in *Colchester*, to *East Donyland* in *Essex*: and on appeal to the quarter-sessions of the borough, this quarter-sessions of the borough of *Colchester*, upon hearing the debates and proofs upon oath on both sides; and it appearing to them, "That the said *John Grimwood*, *Jeremiah Grimwood*, and *Elizabeth Grimwood* were last legally settled in *East Donyland*;" confirm the original order; "subject nevertheless to the determination of his majesty's court of *King's Bench* upon a special case to be stated by council on both sides under the direction of this court" [the sessions.] And they ordered the churchwardens and overseers of *East Donyland* to pay to the churchwardens and overseers of *St. Giles's* 1*l.* 14*s.* in case the order shall be confirmed by the court of *King's Bench*: but if it shall be set aside, then the churchwardens and overseers of *St. Giles's* to pay to those of *East Donyland* a reasonable sum for the maintainance of the said *John*, *Jeremiah* and *Elizabeth Grimwood*, to be settled by any one of his majesty's justices of the peace for the said borough. The special case was as follows.—*Jeremiah Grimwood*, the father, came with his wife and the said paupers his family, with a certificate, dated 30th *June* 1764, from the parish of *East Donyland* to the parish of *St. Giles's*. The paupers, the children, being actually chargeable were removed from *St. Giles's* to *Donyland*, by the abovementioned order, dated 16th *November* 1767. In *May* 1765, *Grimwood* the father hired a dwelling house with the appurtenances, and six acres of land, in the said parish of *St. Giles*, from *Michaelmas* 1765, at the yearly rent of 12*l.* *Grimwood* held the same for two years, to wit, to *Michaelmas* 1767; and paid two years rent. But it appearing to the court, that the lessor of the premises had agreed to pay tythes, poor-rates, window-tax, and all other taxes and assessments whatsoever (excepting the rates to the highways;) all which taxes so agreed to be paid by the landlord amounted annually, in the whole, to the sum of 2*l.* 11*s.* The court of quarter-sessions were of opinion "That the amount of the several taxes agreed to be paid as aforesaid ought to be considered as an abatement of the rent; and reduced the premises under the yearly value of ten pounds; so that no settlement was gained in the parish of *St. Giles*, by such renting of the said premises;" and confirmed the

The quarter-sessions of a borough have no jurisdiction in an appeal from an order of removal. The appeal must be to the quarter sessions of the county.² Bur. Sett. Ca. 592. Trin. 8. Geo. 3. (June 16th, 1768.) Rex. v. inhabitants of East Donyland.

the order of the two justices. Sir *Fletcher Norton* moved, on the last day of last term, to quash this order of sessions: for that *Jeremiah Grimwood* the father did (contrary to the opinion declared by the sessions) gain a settlement in *St. Giles's* by renting this tenement of 12*l.* *per annum*. Rule to shew cause why both these orders should not be quashed. Mr. *Dunning* solicitor-general and Mr. *Birch* now shewed cause why these orders should not be quashed. They said they hoped to be able to maintain that this tenement was under the value of ten pounds *per annum*. The tenant does not pay 12*l.* a year: he only pays nine guineas a year. But they said, it was not necessary to debate that point, as there was a fatal objection to the jurisdiction of the sessions; namely, that the appeal ought to have been to the quarter-sessions of the county, and not to the quarter sessions of the borough. The act of parliament of 8 & 9 *W. 3. c. 30, sect. 6*, directs, "that the appeal against any order for the removal of any poor person from out of any parish, township or place, shall be had prosecuted and determined, at the general or quarter-sessions of the peace for the county, division, or riding wherein the parish, township, or place from whence such poor person shall be removed, doth lie; and not elsewhere." This appeal is from an order of the borough justices made for a removal from a parish in the borough, to the quarter-sessions of the same borough. It ought to have been to the quarter-sessions of the county. To prove this, they cited a case in point; which is reported in *Cases of Settlements, Pa. 6, N^o 10*. It was *Michaelmas 11 Ann.* the case of the parish of *Malden* in *Effex*—Lord *Parker* said "That if two justices of a town corporate that has sessions of their own, make an order there, the appeal must be to the county-sessions, and not to their own sessions: for then there would be an appeal *ab eodem ad eundem*; there being, may be, the same justices sitting who made the order." Therefore the original order, they said, will stand in force, as an order unappealed from. Mr. *Morton* and Sir *Fletcher Norton*,—contra—said that it should have been stated "That *Colchester* is one of those confined limited jurisdictions that have a quarter-sessions of their own, though it is not a county." But at present, it is imperfectly stated; and therefore it should go down again, to be more completely stated. But they urged, that the parish of *St. Giles* are concluded from making this objection, by their having at this borough-quarter-sessions, and upon this appeal, entered into the question upon the merits, and actually settled a case there, for the opinion of this court. The original order therefore is not conclusive as an order unappealed from: for the parties have, all along, been going upon another ground, and have agreed to a case to be stated; out of which case the court cannot go. Besides, the appeal is given to the quarter sessions of counties, ridings and divisions. Now this may be a division. There are divisions which are neither counties nor ridings: and the court cannot intend "that this corporation of *Colchester* is not a division," when it does not appear upon the face of the order that it is not so." Therefore they insisted that the order of confirmation is made by a proper jurisdiction. At least, the objection ought to have been made below; and then there

would have been time to appeal to the quarter-sessions of the county: but that time is now elapsed; and therefore the object comes too late, even if it has any weight in it. If they have been used to hear these appeals, it is an argument of their having jurisdiction to do so. The court did not give any solemn opinion on the merits: nor had they heard what might have been urged, with regard to them. But upon the objection to this appeal to the borough-sessions—They agree that the borough-sessions had no jurisdiction to make this order of confirmation; and therefore their opinion and their order are both nugatory: the appeal ought to have been to the quarter-sessions of the county. As no such appeal has ever been made, the original order stands. The rule to shew cause why it should not be quashed, must therefore be discharged. And accordingly, the rule entered in the rule-book is—“That the original order made for the removal of *John Grimwood*, *Jeremiah Grimwood*, and *Elizabeth Grimwood* from *St. Giles's* in the borough of *Colchester* to *East Donyland*, be affirmed.”

(R A T E.)

Neither the quit-rents, nor the heriots, or other casual profits of a manor, are rateable to the poor-tax. 2 Bur. rep. 991. East. 33 Geo. 2. (May 13th. 1760.) Rex. v. Vandewall, esq.

The only question in this case was, “Whether the lord of a manor is assessable to the poor-rates, under 43 *Eliz. c. 2*, § 1, for the quit-rents, heriots, and casual profits of his manor.” It first came before the court, on *Thursday 21st June 1759*, upon a motion to quash an order of sessions which had confirmed such a rate made upon *Mr. Vandewall*, lord-mayor of *Aldenham*; from which rate, he had appealed to them. But the case not being stated with sufficient particularity, upon this first order of sessions, it was ordered (on *Wednesday 4th of July 1759*,) “That the order, together with the *certiorari*, should be sent back to the sessions, to be stated more fully, as to the matters of fact, and afterwards to be returned again to this court.” This was accordingly done: and the new state of the case was as follows, *viz.* That *Samuel Vandewall*, esq. was charged to the poor’s rate of the parish of *Aldenham*, bearing date the 28th of *March 1759*, in the manner following; that is to say, “For the tithe, 3*l.* 15*s.* for the manor, 2*l.* 5*s.* more, for the quit-rents; 10*s.* 6*d.* more, for the wood-lands, 10*s.*” That it appeared that the said *Samuel Vandewall* did not, at the time of making this rate, hold or occupy any lands houses tithes coal-mines or saleable underwoods within the said parish, parcel of or belonging to the demesnes of the said manor or otherwise, within the said parish; except the tithes for which the said *Samuel Vandewall* is assessed and charged in the said rate at 150*l.* *per annum*, and the wood-lands for which the said *S. V.* is assessed and charged at 20*l.* *per annum*. That the lands from which the quit-rents arise, for which the said *Samuel Vandewall* is assessed and charged in the said rate, are free and copyhold lands holden of the said manor, and in the occupation of divers persons tenants of the said manor, or their lessees or under-tenants, who are respectively charged and assessed for the said lands; in the said rate, as occupiers thereof, according to the rack-rent of the said lands: but that the said quit-rents are not otherwise charged in the said rate, than by the charge on the said

Mr.

Mr. *Vandewall* under the article of quit-rent. That the profits of the said manor, exclusive of the said quit-rents, arise by and consist of escheats, heriots, reliefs, and fines on the admission of copyhold tenants on deaths and purchases, and other casualties arising within the said manor: which, together with the said quit-rents, are by computation *communibus annis* 111*l.* *per annum*; viz. the quit-rents 21*l.* and the other profits of the manor 90*l.* *per annum*. That it does not appear that the said quit rents and the said manor of *Aldenham*, or either of them, have ever been rated to the poors rate of the said parish of *Aldenham*, till within two years last, and since the said *Samuel Vandewall* purchased the same, (which was in or about the year 1754.) Mr. *Norton* moved (on *Friday* 1st *February* 1760,) to quash this order, confirming the rate (as the former had done;) and obtained a rule to shew cause. On *Thursday* 24th *April* 1760, Mr. *Gould* and Mr. *Knowler* shewed cause against its being quashed: and they cited some loose scraps of cases, relating to the subject; viz. *Comberb.* 62, and again 264, both anonymous, and *Hull's* case in *Cartbew* 14, and likewise 2 *Ld. Raym.* 1280. *Dalton* 165, (in the large folio edition.) 3 *Keble* 540, S. C. the corporation of *Wickham* against the mayor. 2 *Bulstr.* 354, Sir *Antony Earby's* case; 2 *Inst.* 703, and *Jeffrey's* case, 5 *Co.* 67, b. Mr. *Norton* and Mr. *Field*, on the other side, argued that the quit-rents and casual profits of a manor were not rateable to the poors tax, within either the words or meaning of 43 *Eliz. c.* 2, no more than ground-rents are. Quit-rents have been already rated to the full, in the hands of the respective occupiers: so that this is rating the same thing doubly. And the casual profits are quite uncertain; and can never be considered as that sort of fund, out of which the poor of a parish are to be supported. The court took some days to consider of the point; as it was a very general and extensive question: but not from any great doubt that they had about it. On *Tuesday* 13th *May* 1760—Lord *Mansfield* very shortly declared their opinion “that these quit-rents and casual profits of the manor are not rateable to the poors tax.” Which, he said, was so clear, that there was no need to enter into reasonings about it. They were never rated before, in this parish; and, as far as appears to us, the rating such quit-rents and casual profits has never been at all attempted before: and there is no colour for this attempt now, after more than a century and an half since the making of the act of parliament upon which it is grounded. Rule made absolute, for quashing the rate and the order of sessions confirming it.

This was an action of trover, for cattle: in which, a special case was agreed upon, for the court's opinion. The special case states, that on the 12th of *April* 1759, an assessment was made and allowed at a vestry of the inhabitants of the parish of *Wix* in *Essex*, to reimburse to *Stephen Durant*, the overseer, the monies laid out in the half year ended on *Easter Monday* then next ensuing the date, for the necessary relief of the poor of the said parish of *Wix*, by the said *Stephen Durant* the overseer, &c. which assessment was in due manner allowed and confirmed by two justices

A rate cannot be made to reimburse an overseer: but he may reimburse himself, whilst in office, out of the next money raised. —
of Poor-rates

should (as it seems) either be made monthly, or at least divided and distributed into so much per month. 2 Bur. Rep. 1152, East. 1 Geo. 3, (April 21, 1761) Stevens v. Evans et al.

of the peace, &c. and published in the church, &c. That *William Vesey* was therein assessed 9*l.* 11*s.* that afterwards, viz. on 18th July 1759, *William Vesey* died, intestate. That on 12th December 1759, administration of his goods, &c. was granted to *John Stephens*, the plaintiff; who possessed himself of his personal estate, and particularly of the cattle in the declaration mentioned. That on the 14th of January 1760, two justices of peace executed a warrant; in which warrant, the said rate or assessment is recited; and the warrant also recites that whereas it appeared on the oath of *Stephen Durant* the late overseer, "that the said 9*l.* 11*s.* had been lawfully demanded of the said *William Vesey* deceased, and of his widow and representative *Susannah Vesey*, since his decease, who have refused and doth refuse to pay the same;" it requires the churchwardens, overseers and constables, &c. to make a distress of the goods and chattels of the late *William Vesey*; and if within six days next after such distress, the said sum of 9*l.* 11*s.* and also reasonable charges of the distress, rendering the overplus to her the said *Susannah Vesey*, be not paid on demand, then to sell, &c. and if no distress be to be had, then to certify the same; so that such further proceeding may be had therein, as to the law doth appertain. By virtue of this warrant, the defendant *Goby* (then constable) and the other defendant *Durant* (the late overseer) at *Wix* aforesaid on the 19th of January 1760, distrained the cattle, and sold them for 15*l.* which cattle so distrained, were the cattle of the said *William Vesey* in his life-time, and at his death, and were distrained on the lands in the said parish of *Wix*, occupied by the said *William Vesey* in his life-time. That the overplus, after payment of the rate, was tendered back. That notice of the action was given to the justices. The question upon this case, is whether the distraining and taking and selling the cattle which were the goods of *William Vesey*, in the hands of the plaintiff, his administrator, by virtue of the said warrant, was lawful, or not. This case stood now in the paper, for argument. Mr. *Norton*, on behalf of the plaintiff, argued that it was not lawful: and an action of trover is maintainable against the parish officers, for taking them. 1st objection. It is a bad rate, and illegal. First—It is a rate made to reimburse an overseer: which is a bad rate, as was settled in *Tawney's case*, 2 *Ld. Raym.* 1009, and 6 *Mod.* 97. *Domina Regina v. Paroch' de Littleport*, S. C. and 2 *Salk.* 531, S. C. *Tawney's case*. For the overseer was not obliged to advance the money without a previous rate: and he may reimburse himself out of the next, made in his own time. Secondly—It is a rate made for half a year ending on *Easter Monday* next: whereas a rate cannot be made for longer than a month. 6 *Mod.* 98, *Tawney's case*, *ut supra*; but called there *Domina Regina v. Par. de Littleport*. The case of *Tracey v. Talbot*, * in 2 *Salk.* 532, is in point. 2d Objection. There was no refusal by the representative to pay the money. Now there can be no distress, without a previous demand and refusal. The refusal was really by *Vesey*, who is dead; and by the widow who was not in fact, (though she is in the case stated to be) his representative. But supposing these objections not to hold, and that the rate and warrant are good; yet the goods of *Vesey* are not distrainable, in the hands

* The 2d resolution.

hands of his personal representative. But supposing these objections not to hold, and that the rate and warrant are good ; yet the goods of *Vesey* are not distrainable, in the hands of his personal representative, for a rate made upon *Vesey* himself. There is no instance of it, nor any case to support this : therefore it ought not to be supported. Nor is there any necessity for it ; for the poor cannot suffer by the non-payment of this money. There are other provisions for raising the money. This is a *casus omisus* : and *lex non curat de minimis*, (as this is.) The acts of parliament give no such power to the justices, as to grant such a warrant : and nothing can be intended in favour of their jurisdiction. It is for this reason, that with regard to the wages of servants they are confined to wages of servants in husbandry only, and cannot exercise such jurisdiction in respect to the wages of other servants. As to any inferred power, (for there is no express power,) none can be pretended, but from 43 *Eliz. c. 2* : for 17 *G. 2, c. 38*, makes no alteration in the method of compelling payment of the rate. It is not the thing that is rated by 43 *Eliz. c. 2, § 1*, but only the person, (the occupier;) and section four gives the means of compelling it : and the occupier alone is the person there meant ; and the refusal to contribute according to the assessment made upon him, is treated as an offence ; and the offender is to be sent to gaol. But the executor or administrator is not an offender : it is a personal charge. An overseer could not bring an action for it, even against the person charged : he must pursue the particular remedy appointed by the act. And if so, the court will never extend the remedy, against a representative. If an administrator should pay this rate, he might be guilty of a *devastavit*. And the compulsion by distress will not alter the case, or be an excuse for a *devastavit*. In what course of debt is this rate to be ranked ? How is the administrator to know what preference it is to have ? There is indeed a legislative exposition made, upon this head, in another statute relating to the poor laws : I mean 17 *G. 2, c. 38, § 3* : which provides a remedy for the case of the death of an overseer who has parish-money in his hands ; and gives the preference of this sort of debt to all others ; directing the executors or administrators of the overseer to pay it out of the assets, “ before any of his other debts are paid and satisfied.” Therefore, as the legislature have made a declaration in that case, and not in this, it is plain that they did not mean so in this case, but meant to leave it to the ordinary course of administration. Mr. *Bishop, contra*, for the justices of peace, and for the parish officers. 1st. The court will not now enter into any objection to the rate. The only questions therefore are as to the warrant, and as to the assets being distrainable in the hands of the representative. As to the demand of the money upon *Vesey* himself, it was made upon him ; and is so stated : and as to the demand upon the representative, the end and intention of this special case, was to settle the material point, the real question, “ whether the goods of the person rated are or are not distrainable in the hands of the representative.” The practice is with us, that they are. It is no answer, to say that other people are liable to pay, if the person rated does not. The question is, whether the

the representative of the person rated, is or is not liable. The authority to make this warrant, and to make the distress in obedience to it, is founded upon the stat. of 43 *Eliz. c. 2*, § 4, which gives this remedy by warrant and distress, upon refusal to pay. The demand of the money is to be made, and in the present case was actually made upon the person assessed: and that made it a debt from him. There was no need of a demand upon the representative: the assets were already become liable, and remained so in his hands. As to the danger of a *devastavit*—A representative could not be guilty of a *devastavit*, even by paying a simple contract-debt before a bond-debt, if he had no notice of the bond-debt: and the distress made upon him would be a justification to him for paying it under the compulsion of such distress. The act of 17 *G. 2, c. 38*, § 3, makes a debt of this sort, payable before any other debts of the deceased overseer. I do not say, that the executor or administrator could be sent to gaol, for non payment of this debt: but yet, the assets in his hands are distrainable, as the proper fund out of which it is to be paid; especially, as no action would lie for it (as Mr. *Norton* agrees.) Mr. *Norton*, in reply—No answer at all has been given to my objection to the rate itself. And I say, that even if the administrator were admitted to be liable to pay, yet still there ought to have been a previous demand upon him. No such practice as what Mr. *Bishop* speaks of, is stated in the case; and therefore the court will intend that there is none such: and I believe there is none. I never heard of it before: I take it to be directly the other way. And, at all events, the poor cannot suffer: for there are other persons who must make up the deficiency, in case this man do not pay. This is scarce a solvent estate; because the widow has renounced administration, and it is granted to a creditor. This is a charge upon the person, which dies with him: like costs payable by one who dies; (for which a bill, in the court of chancery, cannot be revived; and so in this court, upon informations, they are gone by the death of the party.) And the administrator cannot possibly know in what course of administration to pay this rate. If an executor or administrator pays a debt of a lower nature, at that time knowing of others of an higher, it is undoubtedly a *devastavit*: and here there may be debts of an higher nature, which the administrator may know of. And if he is obliged to pay it under compulsion, he ought to pay it without compulsion; and *vice versa*. It is a charge imposed; not a debt. The case was * left open upon its being stated at the trial, to all or any other objections that could be made upon the face of it. There were other debts beside this. Mr. *Just. Denison*.—That makes no difference. The question is stated particularly upon this case; and is confined to the levying the money upon the representative of the person charged. I should think, the event must have often happened, in fact and experience. The practice is not stated: but however, the question is what the law is, not what the practice is. It is a rule, “that upon a new statute which prescribes a particular remedy; no remedy can be taken, but the particular remedy prescribed by the statute.” Therefore clearly, no action of debt will lie for a poor’s rate. This remedy given

* Mr. Bishop
denied this.

by the act of 43 *Eliz.* must be considered with analogy to other like cases. This statute considers the person rated and refusing to pay, as an offender: and it gives no authority but to distrain the goods of the offender. Therefore no goods are liable to be distrained, by the words of this act, but the goods of the offender himself. The act of 17 *G. 2, c. 38, § 3*, is no inconsiderable argument that there was no remedy before the making of the provision in that act of 17 *G. 2, c. 38*, that such sort of debts should have a preference of payment, to all others. I never apprehended that the goods of the person assessed to the rate, can be charged in the hands of the representative. And therefore (as at present advised,) I should think that this action will lie for taking them. I agree that this is in the nature of an execution: but yet it is personal; and I do not know that it is a lien upon the assets. Mr. Justice *Wilmot* concurred; and said he had no doubt about it. He thought the intention of the special case which states a particular question, appeared to be to submit this question only to the court. As to the objections that have been made to the rate, the first is of no great importance: for though you cannot make a rate to reimburse overseers; yet the overseer may immediately (whilst in office) reimburse himself, out of the next money raised for the rate*. And as to the second—He said, he believed that whatever the law might be, the practice was, not to make these rates monthly. On the merits—It is not stated in the case, “that a demand was made even upon *Vesey* (the person assessed,) and that he refused payment:” though it is so recited in the warrant. But that is not material: for I have not the least doubt, but that the representative ought to have been convened before the justices, and asked “what he had to say why he should not pay the rate assessed upon *Vesey* his intestate.” This case seems to be like a *scire facias* upon a judgment; upon which, execution cannot be sued out against the representatives, without asking them what they have to alledge why it should not be taken out. At the time of the teste, they were the *bona et catalla* of the representative. If the teste had been prior to the death, they would have been *bona et catalla* of the deceased: but if tested after his death, they are not his *bona et catalla*; but the *bona et catalla* of the representative. Therefore if the money had been demanded of the representative, I should have had great doubt whether this warrant and distress would not have been good: for I cannot think that by the death of the person charged with this rate, the assessment before made upon him and demanded of him would have been quite gone and lost to the parish, and could not have been any way come at. For though it may be a charge upon the person, (as has been objected,) yet it is a charge upon him in respect of the thing occupied: and though he be called an offender, if he refuse to pay it, yet he can be no otherwise considered as an offender, than every other debtor who refuses or neglects to pay his debts, and thereby renders his person and goods liable to be taken in execution, is so far treated as an offender, till he shall comply with the judgment awarded. And in experience, I know it to be the case, that these payments by executors or administrators are often allowed, (I dare say I have known it done fifty times) to go

* See *Tawney's case*, ut supra accord.
† The law seems to be, that they should either be made monthly, or at least divided and distributed into so much per month. See *Tawney's case*; and also *Tracey v. Talbot*, 2 *Salk.* 532, and *Rex v. justices of Middlesex*, *Hil. 9 G. 2, B. R.*

in discharge of the assets of the testator or intestate. I do not say, in what course of administration of assets: but it has been very often allowed, I am sure; though I do not remember that it has been settled in what course of administration. Indeed it might be of too much consequence, to put it into the power of justices of peace to determine upon the administration of assets, as to the course in which they were to be administered. In a case of *Wallis, administrator v. Hewit*, at *Guildhall*, at the sittings after Hil. Term 5 G. 2, before Lord Chief-justice *Eyre*, in an action of trespass, two aldermen of *London* had made a warrant to distrain a man for a poor-rate. The man died intestate; but before that, there had been a demand made upon him and refusal by him, and a warrant of distress granted upon his refusal: and then he died—*Eyre* Chief-justice held that a distress could not be made after his death; or if it could, yet the representative ought to have been summoned: and he held the property to be changed. A case was made for the opinion of the court of Common Pleas: but I could not hear what became of it. Lord Chief-justice *Eyre* was a great lawyer. It would be strange, that a distress should be taken upon a man's goods without hearing him: and it would make strange confusion in the administration of assets. He may have paid or retained judgment-debts prior to this distress for the rate. I have no doubt that the plaintiff here is intitled to his judgment. Mr. *Gould* was retained to take notes for the defendant. But he said that if Mr. *Norton* insisted upon the want of a demand from the representative, he could not pretend to maintain the case on the part of the defendants. Mr. Justice *Denison* and Mr. Justice *Wilmot* said that that was an essential circumstance. *Per cur*, unanimously, rule for the *posse* to be delivered to the plaintiff.

Hospitals are rateable, or not, to the poor's tax, according to circumstances. 2 Bur. Sett. Ca. 1053, Mich. 1 Geo. 3, (Nov. 7, 1760) *Rex v. occupiers of St. Luke's hospital*.

On Monday 29th of January 1759, Mr. *Williams* moved to quash an order made by the justices of peace for the county of *Middlesex*, at their quarter-sessions at *Hicks's Hall*, confirming an assessment or rate for the relief of the poor, made upon one *Joseph Mansfield*, and charging him as occupier of *St. Luke's Hospital*; being of opinion, upon consideration of the circumstances therein set forth, "that the said *Joseph Mansfield* is the occupier of the said hospital:" whereas in fact, he was (as Mr. *Williams* alleged) only a servant there. He cited 2 *Strange* 745, *Rex v. inhabitants of St. Thomas's in Southwark*; where a preacher at a meeting-house was holden not to be rateable as an occupier. A rule was thereupon made, to shew cause. And on Tuesday 8th May 1759, Mr. *Gould* moved to make that rule absolute; insisting upon two objections to the validity of the rate, viz. 1st. "That this man is only a servant;" and therefore could not be "rated as occupier:" 2d. "That this hospital is not rateable at all." Mr. *Norton*, (who was for the rate,) agreed that, strictly speaking, it could not well be supported "that a servant was rateable as occupier:" but he offered to defend it upon the merits; viz. whether this new erected charitable hospital for lunatics, be or be not rateable. And if the other side would not agree to that, he said he must object to the *certiorari*, as having irregularly issued; viz. not till after the six months were expired: (it being

being more than nine months from the 2d of *February* to *Michaelmas* term.) And accordingly, a rule was then made to shew cause "why the *certiorari* should not be quashed." But afterwards, on *Wednesday* 16th *May* 1759, it was ordered, by consent of counsel on both sides, "that the orders returned with the *certiorari* in the cause of the king against *Joseph Mansfield* (who then stood charged as occupier of this hospital) should be sent back to be re-stated." In consequence of which rule by consent, the following re-stated order was afterwards sent up, as the return to the said writ: *viz.* a complaint and appeal being made unto this court, against a certain article contained in the rate or assessment made on the 19th day of *July* in the year of our Lord 1757, for relief of the poor of the parish of *St. Luke* in the said county, which article is as follows, *viz.*—"The occupiers of a messuage or tenement and premises called *Saint Luke's Hospital* for lunatics: rent 80*l.* rate 2*l.* 13*s.* 4*d.*" By which article, the said messuage called *St. Luke's Hospital* for lunatics is valued after the rate of 80*l.* by the year, and assessed (accordingly) to pay 2*l.* 13*s.* 4*d.* by the quarter of a year; and this court having fully heard and examined the said complaint and appeal, it appears in evidence unto this court, that by indenture made the 21st day of *November* in the year of our Lord 1750, between the mayor, commonalty and citizens of the city of *London* of the one part, and *James Sperling* of *Mincing Lane* in the parish of *St. Dunstan* in the *East, London*, merchant, *Henry Bankes* of the parish of *St. Mary Hill*, citizen and grocer of *London*, *Richard Speed* of *Old Fish-Street* in the parish of *St. Mary Magdalen, London*, druggist, *Thomas Light* of *Mincing-Lane* afore said in the said parish of *St. Dunstan* in the *East*, merchant, and *William Prowling* of *Tower-Street*, in the said parish of *St. Dunstan* in the *East*, apothecary, of the other part, the said mayor, commonalty and citizens, as well for and in consideration of the sum of 100*l.* of lawful money of *Great Britain* already paid to Sir *John Bosworth, knt.* chamberlain of *London*, to and for the public uses of the said mayor, commonalty and citizens, as also for and in consideration that they the said *James Sperling, Henry Bankes, Richard Speed, Thomas Light* and *William Prowling*, should and would build or convert the premises in the said indenture mentioned, or some part thereof, into an hospital for lunatics; and for and in consideration of the rents and covenants in the said indenture contained on the part and behalf of the said *James Sperling, H. B. R. S. T. L.* and *W. P.* their executors administrators and assigns to be paid and performed, and for divers other good causes and considerations them the said mayor and commonalty and citizens especially moving, did, pursuant to an order of the court of common council made the 15th day of *November* then next preceding, demise grant and to farm let unto the said *J. S. H. B. R. S. T. L.* and *W. P.* their executors administrators and assigns, all that piece or parcel of ground, with the buildings thereupon erected, situate and being on *Windmill-hill* in the parish of *St. Luke* in the county of *Middlesex*, containing from west to east, on the south side fronting the *Upper Moor-fields*, 180 feet of assize (little more or less,) and from south to north on the east side, 178 feet of assize (little more or less,) and from east to west

Note---The re-stated order was under the like caption (verbatim) with the old one.

on the north side, 165 feet of assize (little more or less,) and from north to south on the west side, 180 feet 2 inches of assize (little more or less,) and abutting on the way leading to *St. Agnes le Clair*; all which said premises were formerly demised, by two separate leases, to *Philip Whiteman* and *John Davis*, and do more fully appear by a scheme or draft thereof, with a scale made to the same, unto the said indenture annexed: to have and to hold the said piece or parcel of ground with the appurtenances, unto the said *J. S. H. B. R. S. T. L.* and *W. P.* their executors administrators and assigns, from the feast day of the birth of our Lord Christ next ensuing the date of the same indenture, for and during and unto the full end and term of 32 years from thence next ensuing and fully to be complete and ended; yielding and paying therefore yearly and every year during the said term, unto the said mayor and commonalty and citizens, in the office of receipts and payments of money of the said chamberlain of the said city for the time being, the rent or sum of ten pounds of lawful money of *Great Britain*, on the four most usual feasts or terms in the year, that is to say, the feast of the Anunciation of the Blessed Virgin *Mary*, the Nativity of *St. John* the baptist, *St. Michael* the Archangel, and the Birth of our Lord *Christ*, by even and equal portions, without making any deduction defalcation or abatement for or by reason of any taxes rates or assessments imposed or to be imposed during the term aforesaid upon the premises hereby demised or any part thereof, by any act or acts of parliament or otherwise howsoever; the first payment thereof to begin and to be made on the feast of the Annunciation of the Blessed Virgin *Mary* next ensuing the date of the same indenture; and that it was amongst other things covenanted and agreed by the said indenture and between the said parties thereto, that they the said *J. S. H. B. R. S. T. L.* and *W. P.* their executors administrators or assigns or some of them should and would build or convert the premises thereby demised or some part thereof into an hospital for poor lunatics, and employ the same to no other use intent or purpose whatsoever during the said term; and that among other things in the said indenture, are contained two clauses and provisoes in the following terms, "provided always that if the said yearly rent of 10*l.* be behind and unpaid in part or in all by the space of fourteen days next after any of the said days of payment on which the same ought to be paid as aforesaid, being lawfully demanded at the place of payment aforesaid, or if the said *J. S. H. B. R. S. T. L.* and *W. P.* their executors administrators and assigns do not well and truly perform and keep all and singular the covenants herein contained on his and their parts to be performed and kept, that then and at all times afterwards it shall and may be lawful to and for the said mayor and commonalty and citizens or their assigns into all or any part of the said demised premises in the name of the whole wholly to re-enter, and the same to have again retain and re-possess in their former estate, and the said *J. S. H. B. R. S. T. L.* and *W. P.* their executors administrators and assigns and all other occupiers of the premises thereout and from thence utterly to expel put out and amove, these presents or any thing therein contained to the contrary.

contrary notwithstanding: provided also, and these presents are upon this condition, that if the said *J. S. H. B. R. S. T. L.* and *W. P.* their executors administrators or assigns or any of them do or shall at any time or times hereafter during the said term convert the said premises to any other use than that of the charitable design of poor lunatics, then these presents and every thing herein contained shall cease, determine and be utterly void: any thing herein contained to the contrary thereof in any wise notwithstanding." It appears likewise in evidence unto this court, that before the erecting the said hospital, divers, to wit, twenty-nine houses were situate upon the land and premises in and by the said indenture contained and demised; and that in the several rates made by the overseers of the poor for the relief of the poor within the said parish of *St. Luke*, for in and during the several years between the year of our Lord 1744 and the date of the indenture herein before mentioned, the said twenty-nine houses were valued and estimated at the annual value of 196*l.* by the year: and that in the year of our Lord 1745, the said twenty-nine houses being assessed in the rate made in the said year for the relief of the poor within the said parish of *St. Luke*, after the rate and proportion of three shillings in the pound sterling, did yet pay and yeild no more to the said overseers in satisfaction of the said rate and towards the relief of the poor, than ten pounds and one shilling; and that in the year of our Lord 1746, the said twenty-nine houses being assessed in the rate made by the overseers of the poor of the said parish of *St. Luke* in the said last mentioned year for the relief of the poor within the said parish after the rate and proportion of three shillings in the pound sterling, did yet pay and yield no more to the said overseers in satisfaction of the said rate and towards the relief of the poor, than 8*l.* 11*s.* and that in the year of our Lord 1747, the said twenty-nine houses being assessed in the rate made in the said last mentioned year for the relief of the poor within the said parish of *St. Luke* after the rate and proportion of 3*s.* 3*d.* in the pound sterling, did yet pay and yield no more to the said overseers in satisfaction of the said rate and towards the relief of the poor, than 8*l.* 14*s.* 9*d.* And that in the year of our Lord 1748, the said twenty-nine houses being assessed [ut supra] after the rate and proportion of 3*s.* in the pound sterling, did yet [ut supra] no more than 7*l.* 1*s.* And in the year of our Lord 1749, the said twenty-nine houses being *£c.* after the rate and proportion of 3*s.* *£c.* no more *£c.* than 6*l.* 3*s.* And that in *£c.* 1750, the said twenty-nine houses being assessed [ut supra] after *£c.* of 2*s.* 9*d.* in the pound sterling, did yet *£c.* no more *£c.* than 2*l.* 8*s.* 9*d.* It appears also in evidence to this court that the premises demised were accordingly built and converted into the hospital mentioned in the said article of the rate in question, called, "*St. Luke's Hospital for lunatics*," for the affording a charitable and free sustentation and cure to poor and helpless lunatics; and that every apartment and pareel of the said premises so built and converted into such hospital as aforesaid, is laid out and applied, either in wards or cells for the lodging of such lunatics as aforesaid, or in offices necessary for their sustentation and cure, or in apartments.

apartments necessary for persons who are hired from time to time to attend on such lunatics for their better sustentation and cure, and in no other apartments or buildings whatsoever; and that the said edifice was originally erected, and still is supported, and very many poor and helpless lunatics continually have been and still are sustained and taken care of therein, and the menial servants attending upon such lunatics have been and still are hired and paid, and all other expences relating to and necessary for the maintaining the said hospital and charity have been and still are from time to time defrayed and born, by the free and voluntary contribution of divers persons; out of whom, a committee annually is appointed, who meet weekly, to order the admission and discharge of patients, the hiring and retaining servants, the payment of bills, and the regulation of all other matters relative to the maintenance and upholding of this charity; and that none but such poor and helpless lunatics, and the persons necessarily attending upon them, have any kind of dwelling or occupation in the said hospital; and that one *Joseph Mansfield* (the appellant) is the principal person hired from year to year by the said committee of contributors, and receiving certain wages, and living in the said hospital for the purposes of attending on the said lunatics, and having no other abode occupation or establishment therein; and that the said *James Spirling*, *Henry Bankes*, *Richard Speed*, *Thomas Light* and *William Prowting* or any of them, their or any of their executors administrators or assigns, have not nor ever had or can have any profit benefit or advantage from the said premises or any part thereof, nor any possession or occupation thereof otherwise than as aforesaid. This court [The general session at *Hick's* hall,] upon consideration of the circumstances above set forth, is of opinion, "That the said tenement called *St. Luke's* hospital ought to be assessed and rated towards the relief of the poor, by the said rate;" and doth accordingly dismiss the said appeal, and confirm the said rate. By the court, *Waller*. Mr. *Gould*, Mr. *Thurlow*, and Mr. *Lane*, on behalf of *St. Luke's* hospital, moved (on *Monday 23d June 1760*,) to quash this restated order of sessions, thus again confirming the said rates. They argued, 1st. That this building itself, (an hospital supported by voluntary charitable contributions) was not rateable towards the support of the poor; and, 2dly. That no particular person whosoever was chargeable as occupier of it. First—This is only a mere building, a house supported by private free and voluntary charitable pecuniary contributions; and used only as an hospital for the sustentation and cure of poor and helpless lunatics: it has no apartments in it, nor any accommodations for the residence of any persons whatsoever, except the patients and the hired servants necessarily attending them. It is not endowed with any land; nor has it any land about it, being the mere site of the house itself. Therefore it cannot possibly be included within the intention of the dictum of Lord Chief-justice *Holt*, mentioned in a scrap of an anonymous case in 2 *Salk.* 527. "That hospital-lands are chargeable to the poor, as well as other lands: for no man, by appropriating his lands to an hospital, can discharge or exempt them from taxes to which they were subject before, and throw a
greater

greater burthen upon their neighbours." For he there plainly means lands leased out to tenants and bringing in an annual profit: which is, by no means, the present case. This is no beneficial lease: the lessees receive no profit by it; nor can they, by the proviso in their lease, put it to any other use than that of the charitable design of poor lunatics. The statute of 43 Eliz. c. 2, § 14, 15, directs "That a proportion of the money to be raised by virtue of that act, shall be sent for the relief of hospitals in the respective counties." And it would be absurd to suppose, that that same statute intended to tax hospitals towards the relief of hospitals. In 2 Bulstr. 354, the judges (*Hutton and Croke*) put the matter of taxing one or the other of the persons there in question, upon the foot of the profit or advantage received by them. But these lessees receive no sort of profit or advantage, nor can possibly receive any, under this lease. And nothing is subject to be rated towards the relief of the poor, but a beneficial interest. There is no instance of an hospital having ever been rated, as to such part of it as is only applied to charitable uses: whatever may have been done, as to those large and fine apartments in the great hospitals, wherein the officers (who are gentlemen of fortune and fashion) reside with all their families, and use them as their dwelling-houses. Secondly—No particular person whosoever can be charged as occupier of this house of mere charity. By the 43 Eliz. c. 2, § 1, the taxation is to be upon every occupier of lands, houses, tithes, coal-mines, or sale-underwoods in the parish. But none of the persons mentioned in this order are occupiers of this house, within the meaning and intention of the makers of this act. They have no possession or enjoyment of any lucrative or profitable tenement. Therefore there is no rule or medium or proportion whereby to rate them: for if they were rateable at all, it must be in proportion with others. But these persons receive no profit or emolument at all: and there can be no proportion to nothing. Therefore they are not rateable at all. For the same reason, no person can be rated as an occupier of a church, a meeting-house, or an alms-house. * In *H. 13 G. 1*, in this * See 2 Strange 745. court, one *Read* was charged to the poor's rate in respect of his being an occupier of a meeting-house where he preached: and he was holden not to be liable; because as a preacher, he is no more chargeable as an occupier, than any of his audience. And the court there took notice, that it was not stated "that he let out pews;" so as to make him a person that occupies, and receives a profit from it. So, in the present case, no one can be charged as occupier; because no one receives any lucrative profit. And this circumstance makes it widely different from the case of *Eyre v. Smallpace et al*, *P. 1750. 23 G. 2, B. R.* where the question was "whether the plaintiff, being controller of *Chelsea* college, and residing in the controller's apartments there, was assessable towards the maintenance of the poor of the parish of *Chelsea*, for the apartments which he occupied there by virtue of his said office:" and the court held him to be chargeable, as occupier; grounding their opinion upon a then recent and unanimous opinion of all the judges, upon a like question, in the case of *Greenwich*-hospital, concerning the payment of the window-tax; in which case

all the twelve judges unanimously held, "That the act of parliament relating to the window-tax did extend to the apartments of officers in *Greenwich-hospital*;" which case of *Greenwich-hospital* they thought not distinguishable from that of *Chelsea-hospital* then in judgement before them. But that was an hospital of royal foundation, and the king's own house. The officers have large and noble apartments there, with distinct doors: they reside in them with their families, and live distinctly in them, at their separate expences. Those apartments are substantially their house, their domicile. In this hospital, there are only cells for the lunatics, and a bare lodging for those who necessarily attend them, and are always about their persons. On 6th *November* 1760, Mr. *Norton* and Mr. *Stowe* argued in support of the order. They insisted, 1st. That this building was rateable; and 2dly. That the charge is sufficiently laid upon it, although no particular occupier be personally and specifically named. First, hospital-lands are rateable to the relief of the poor of the parish wherein they lie, as well as other lands are: this appears from 2 *Salk.* 527. And this charity is only a voluntary act of private persons, proprietors of this building: which private persons have it not in their power, by applying it to the use of a charity, to discharge it of legal rates and payments duly charged upon it for the relief of the parish; and thereby to take away this relief from the parish. And it would be most unreasonable that this property which was always rateable before, should merely by voluntary act of the proprietor, be rendered unrateable; when, by that very act, the proprietor introduces many servants into this building, who will gain settlements in the parish by their service performed therein: So that these gentlemen would load the parish with poor, and yet exempt themselves from paying any thing towards it's relief. Therefore the parish are still intitled to their rates; whether the proprietors make a beneficial interest of it, or choose to apply it to the purposes of a charity. And there are many instances of hospitals and charitable foundations being in fact rated to the relief of the parishes wherein they are situated: particularly, the *British* lying-in hospital, in *St. Giles's*; an hospital in *St. Botolph's, Aldersgate*; another in *St. James's Clerkenwell*; (which last never, till now, refused to pay.) And this very hospital pays the land-tax, and also the four rates, (*viz.* scavengers, lights, &c.) And the cases of window-lights are not unlike to the present case. The *Foundling-hospital* pays the window-tax; as appears by the tax-book (*Fo.* 48 :) and all the judges (upon the question being referred to them,) were of opinion, "That they ought to do so." So, *St. Bartholomew's* hospital was an instance where the officers were assessed for their apartments: and on the 7th *June* 1748, all the judges held them rateable. So also in the case of *Christ's* hospital (at the same time,) and of *St. Bride's*, and *St. Thomas's*, the general point determined was "That the officers are chargeable to the window lights." In the case of the *French* hospital in *St. Luke's*, the judges held it not to be assessable, as to the lunatics maintained therein: but they gave no opinion as to the charge upon one *Romier* (who was personally assessed,) because it did not appear to them, whether he did or did not live in it. In the case

case of *Sutton's* hospital, where some of the officers have their apartments intermixed with the rooms of the persons supported by that charity, the commissioners thought "that none of the inhabitants of those intermixed rooms were chargeable, (neither the officers, nor the poor men;)" and the judges confirmed that opinion of the commissioners. In the present case, the five lessees may be considered as occupiers by their servants, who are under their control; and they are properly chargeable, as such: the patients indeed neither are nor ought to be rated. And they concluded this head, with observing "that the 43 *Eliz. c. 2*, is a beneficial law made for the benefit of the poor of the parishes." Secondly—As to the not charging any particular person, as occupier—They insisted that it was not necessary that any particular person should be specifically rated as occupier. They cited a case, from 8 *Mod. Pa. 38. Rex v. inhabitants of* * *Brickbill*, P. 7, G. 1, B. R. where a man who had been rated by the name of "The occupier of *Roscoe's* tenement," and not by his own proper name, and had paid the said rates under such assessment, was holden to have gained a Settlement under this general rate. They also urged the case in 2 *Salk. 527. P. 1, Ann. Anonymous*: which they said, was probably the same case with a case of *Rex v. Staines*, † relating to the parishes of *Ilford* and *East Ham*. And they said they had a certificate "that the parishes of *Ilford* and *East Ham* do now pay." Mr. *Gould* and Mr. *Lane*, who had made the objections to the order, replied—1st. That the cases and instances cited by the counsel on the other side proved nothing to the present point: for they went no farther than the case of *Chelsea* hospital, *Eyre v. Smallpace et al*, P. 1750. 23 *Geo. 2, B. R.* where it was settled "That all apartments of officers, used as dwelling-houses, are liable to be taxed to the window-lights, as dwelling-houses." And the window-light acts are positive and affirmative, "that all dwelling-houses shall pay to that tax." The officers have a benefit from their apartments. But here could arise no benefit at all, to any person whatsoever: therefore no one could be taxable to the relief of the poor. And as to their loading the parish by introducing servants who would gain settlements by their service in the hospital, they denied that these servants would gain a settlement by such service. 2dly. The case of *Brickbill*, being cited from a book of no authority, deserves no answer. Besides, in that case, the man had long acquiesced under the order, and paid the tax. The court did not give any opinion yesterday; but inclined that the occupier ought to be particularly specified;" and also, that the whole turns upon the person or persons who ought to be rated." Indeed, if a person rated generally, by the appellation of occupier of such tenement, acquiesces, and takes the charge upon him, and pays it; it would be unreasonable that he should be excluded from gaining a settlement, if he afterwards has occasion to claim it. But that is not this case. The instances of the several hospitals, mentioned by the counsel for supporting the order, carry the matter no farther than the case of *Chelsea* hospital has settled it: and the judges have unanimously determined, "that all apartments of officers in hospitals, which are used as dwelling-houses, ought to be taxed to the window-lights, as dwelling-houses."

* This case really was *Rex v. inhabitants of Brightmen (in Lancashire) P. 8 G. 1, 1722*. The point was indeed determined as is mentioned in 8 *Mod. 38*: (though the names, persons and places are there mistaken) But the man had actually paid the rate no less than eleven years, under this assessment, which described him without specifying his name, viz. calling him only "the occupier of *Roscoe's* tenement."

† *Rex v. Staines* was H. 13 W. 3. *William*

Staines was taxed to those two parishes, for the con-

cerns of an hospital in them. The feffions, upon appeal, discharged the original order as being founded upon misinformation and surpize.

houses." However, they said they would consider of it, and then declare their opinion. *Cur advis.* Lord Mansfield now delivered the opinion of the court; (having first stated the order, and the objections taken to it.) Cases of this kind depend upon the particular nature of the respective hospitals: each stands upon its own distinct circumstances. Therefore no general consequences will arise from the determination of this particular case. The land-tax differs from the poor's-tax. The land-lord who receives the rent, is to pay the land-tax: but the poor's tax is payable by the occupiers. Therefore the rating hospital lands to the land-tax is not applicable to the present question. The occupier ought to be rated, regularly, by name. But in the present case, it is more than a mere defect in form: the fault in form here arises from the essence of the thing. For if they can not fix upon some particular person who may properly be rated as occupier of this building, it follows, as a necessary consequence, "that no rate can at all be made upon it." As to the argument that has been urged in support of the order, "that a proprietor of lands or houses can not, by his own private voluntary act, discharge such his property, from payments legally due to other persons upon and out of it."—It does not hold true in fact. For this rate payable to the parish, as well as several other payments arising from property and chargeable upon it, do and must depend upon the will of the proprietor. The owner of a house may, if he pleases, pull it quite down, and convert it into a toft. The owner of lands may, if he pleases, suffer them to lie barren and unoccupied. Tithes and the right of them vary, according to the different species of the produce of the land: yet the landholder may sow it, or plant it, or use it in the manner he likes best; or even not at all, if he so chuses. The material question in this case is, "who can be named and charged as the occupier." There are only three sorts of persons that occur to me. If they can find any others who may be properly charged as occupiers, such other persons will not be included in or affected by the opinion which we now give. The only persons that I can think of, are 1st. The five lessees; 2dly. The servants attending this charity; and, 3dly. The poor mad persons, who are the objects of it. First—As to the lessees—Mere nominal trustees can not be esteemed occupiers, or rated as such. Besides, these lessees are expressly excluded, by a special proviso inserted in the lease, from converting the building to any other than this special use: and the lease is to determine and become void, if they do. They are so far therefore from being occupiers of it, that they are merely nominal; mere instruments of conveyance; and have no more interest in the thing, than the crier of the court of Common Pleas has, when he is named as the last vouchee in a common recovery. Secondly.—As to the servants attending this charity—They are not in a like situation with the officers of *Chelsea* hospital, or of the other charitable foundations that have been mentioned at the bar, where there are legal distinct apartments appropriated to the use of the respective officers, wherein they and their families reside. Those officers are not charged as servants of such hospitals, or as inhabitants and occupiers of the ordinary rooms and lodgings

lodgings therein; but as having separate and distinct apartments, which are considered as their dwelling-houses. The cases that have been determined by the judges, relating to the window-tax, are uniform in rating officers of hospitals for their distinct apartments: but in this hospital, there are neither any such officers, or any such apartments, as were in those cases determined to be rateable. If the first of these orders, which rated *Joseph Mansfield* as the occupier of this hospital, had stood as it was originally drawn up, without being afterwards altered; and if *Mansfield* had actually had a separate and distinct apartment in it (which is not now pretended;) yet certainly he could not have been rated for any thing more than his own particular and distinct apartment. However, that matter ceases now to be any part of the case; there being no foundation, by the new order, to ground such a question upon. Thirdly.—As to the poor miserable wretches who are the unhappy objects of this charity—It would be too gross to conceive them to be proper persons to be rated to the relief of the parish. Therefore it is unnecessary to say any thing on this head; and the rather, as it appeared so very unreasonable to the counsel themselves, who argued in support of the order, that they gave it up. And if no person can be found, who is rateable to this tax, it follows by necessary consequence, “that there can be no rate at all.” Therefore the order must be quashed.

For more learning concerning settlements, the reader is referred to the first and second volumes of Mr. Burrow's Series of Decisions upon Settlement-cases.

Popery.

The statute of provisors of benefices, made anno 25 Edw. 3, stat. 6, and A. D. 1350.

The king and other lords shall present unto benefices of their own, or their ancestors foundation, and not the bishop of *Rome*.

WHEREAS late in the parliament of good memory of *Edward king* 3 Inst. 127, 2 Roll. 459.
of *England*, grandfather to our lord the king that now is, the Raft. 2, Stat. Carlisle, 35
twenty-fifth year of his reign, holden at *Carlisle*, the petition heard, put Ed. 1, c. 4. f. 3.
before the said grandfather and his council in his said parliament by the
commonalty of the said realm, containing, That whereas the holy church
of *England* was founded in the estate of prelacy, within the realm of The causes why the kings and noblemen of the realm did give lands to bishops and other prelates.
England, by the said grandfather and his progenitors, and the earls, barons, and other nobles of his said realm, and their ancestors, to inform
them and the people of the law of God, and to make hospitalities, alms, and

and other works of charity, in the places where the churches were founded, for the souls of the founders, their heirs, and all Christians; (2) and certain possessions, as well in fees, lands, rents, as in advowsons, which do extend to a great value, were assigned by the said founders to the prelates and other people of the holy church of the said realm, to sustain the same charge, and especially of the possessions which were assigned to archbishops, bishops, abbots, priors, religious, and all other people of holy church, by the kings of the said realm, earls, barons, and other great men of his realm; (3) the same kings, earls, barons, and other nobles, as lords and advowees, have had and ought to have the custody of such voidances, and the presentments and the collations of the benefices being of such prelaties.

The pope bestowed spiritual livings upon aliens not dwelling in England.

The inconveniences ensuing thereon.

Set. 2. "And the said kings in times past were wont to have the greatest part of their council, for the safeguard of the realm when they had need, of such prelates and clerks so advanced; (2) the bishop of *Rome* accroching to him the seignories of such possessions and benefices, doth give and grant the same benefices to aliens, which did never dwell in *England*, and to cardinals, which might not dwell here, and to other as well aliens as denizens, as if he had been patron or advowee of the said dignities and benefices, as he was not of right by the law of *England*; whereby if they should be suffered, there should scarcely be any benefice within a short time in the said realm, but that it should be in the hands of aliens and denizens by virtue of such provisions, against the good will and disposition of the founders of the same benefices; (3) and so the elections of archbishops, bishops, and other religious should fail, and the alms, hospitalities, and other works of charity, which should be done in the said places, should be withdrawn, the said grandfather, and other lay-patrons, in the time of such voidances, should lose their presentment, the said council should perish, and goods without number should be carried out of the realm, in adnullation of the estate of the holy church of *England*, and disherison of the said grandfather, and the earls, barons, and other nobles of the said realm, and in offence and destruction of the laws and rights of his realm, and to the great damage of his people, and in subversion of all the estate of his said realm, and against the good disposition and will of the first founders: (4) by the assent of the earls, barons, and other nobles, and of all the said commonalty, at their instances and requests, the damage and grievances afore considered, in the said full parliament it was ordained, provided, established, agreed, adjudged, and considered, that the said oppressions, grievances, and damages in the same realm from henceforth should not be suffered in any manner. (5) And now it is shewed to our lord the king in this present parliament holden at *Westminster*, at the *ut*as of the purification of our lady, the five and twentieth year of his reign of *England*, and of *France* the twelfth, by the grievous complaints of all the commons of his realm, that the grievances and mischiefs afore-said do daily abound, to the greater damage and destruction of all his realm of *England*, more than ever were before, *viz.* that now of late the bishop of *Rome*, by procurement of clerks and otherwise, hath reserved, and doth daily reserve to his collation generally and especially, as well arch-

The pope giveth the benefices of the church, and

archbishopricks, bishopricks, abbeyes, and priories, as all other dignities and other benefices of *England*, which be of the advowry of people of holy church, and give the same as well to aliens as to denizens, and taketh of all such benefices the first fruits, and many other profits, and a great part of the treasure of the said realm is carried away and dispended out of the realm, by the purchasers of such benefices and graces aforesaid; (6) and also by such privy reservations many clerks advanced in this realm by their true patrons, which have peaceably holden their advancements by long time, be suddenly put out: (7) whereupon the said commons have prayed our said lord the king, that sith the right of the crown of *England*, and the law of the said realm is such, that upon the mischiefs and damages which happen to his realm, he ought, and is bound by his oath, with the accord of his people in his parliament thereof to make remedy and law, and in removing the mischiefs and damages which thereof ensue, that it may please him thereupon to ordain remedy.

Sett. 3. "Our lord the king, seeing the mischiefs and damage before-mentioned, and having regard to the said statute made in the time of his said grandfather, and to the causes contained in the same; which statute holdeth always his force, and was never defeated, repealed, nor adnulled in any point, and by so much as he is bounden by his oath to cause the same to be kept as the law of his realm, though that by sufferance and negligence it hath been sithence attempted to the contrary; (2) also having regard to the grievous complaints made to him by his people in divers his parliaments holden heretofore, willing to ordain remedy for the great damages and mischiefs which have happened, and daily do happen to the church of *England* by the said cause; (3) by the assent of all the great men and the commonalty of the said realm, to the honour of *God*, and profit of the said church of *England*, and of all his realm, hath ordered and stablished, that the free elections of archbishops, bishops, and all other dignities and benefices elective in *England*, shall hold from henceforth in the manner as they were granted by the king's progenitors, and the ancestors of other lords, founders of the said dignities and other benefices. (4) And that all prelates and other people of holy church, which have advowsons of any benefices of the king's gift, or of any of his progenitors, or of other lords and donors, to do divine services, and other charges thereof ordained, shall have their collations and presentments freely to the same, in the manner as they were enfeofed by their donors. (5) And in case that reservation, collation, or provision be made by the court of *Rome*, of any archbishoprick, bishoprick, dignity, or other benefice, in disturbance of the free elections, collations, or presentations aforesaid, which at the same time of the voidance, that such reservations, collations, and provisions ought to take effect, our lord the king and his heirs shall have and enjoy for the same time the collations to the archbishopricks and other dignities elective, which be of his advowry, such as progenitors had before that free election was granted, since that the election was first granted by the king's progenitors upon a certain form and condition, as to demand license of the king to chuse, and after the

reserveth the first fruits to himself.

The causes and reasons of making this statute.

Elections of the dignities of the church shall be free, as they were founded.

Patrons and founders of the dignities of the church, and their heirs, shall have the collation or presentation to them being void.

9 H. 3, stat. 1, c. 33.

11 H. 4, f. 37, 59, 76.

Where the pope maketh provision to a dignity of the church the king shall present.

the election to have his royal assent, and not in other manner; which conditions not kept, the thing ought by reason to resort to his first nature.

Stat. 4. " And if any such preservation, provision, or collation be made of any house of religion of the king's advowry, in disturbance of free election, our sovereign lord the king, and his heirs, shall have for that time the collation to give this dignity to a convenient person. (2) And in case that collation, reservation, or provision be made by the court of *Rome* of any church, prebend, or other benefices, which be of the advowry of people of holy church, whereof the king is advowee paramount immediate, that at the same time of the voidance, at which time the collation, reservation, or provision ought to take effect as afore is said, the king and his heirs thereof shall have the presentment or collation for that time. (3) And so from time to time, whensoever such people of holy church shall be disturbed of their presentments or collations, by such reservations, collations, or provisions, as afore is said, saving to them the right of their advowsons and their presentments, when no collation or provision of the court of *Rome* is thereof made, where that the said people of holy church shall or will to the same benefices present or make collation; and that their presentees may enjoy the effect of their collations or presentments. (4) And in the same manner every other lord, of what condition that he be, shall have the collations or presentments to the houses of religion which be of his advowry, and other benefices of holy church which be pertaining to the same houses. (5) And if such advowees do not present to such benefices within the half year after such voidances, nor the bishop of the place do not give the same by lapse of time within a month after half a year, that then the king shall have thereof the presentments and collations, as he hath of other of his own advowry. (6) And in case that the presentees of the king, or the presentees of other patrons of holy church, or of their advowees, or they to whom the king, or such patrons or advowees afore said, have given benefices pertaining to their presentments or collations, be disturbed by such provisors, so that they may not have possession of such benefices by virtue of the presentments or collations to them made, or that they which be in possession of such benefices be impeached upon their said possessions by such provisors; then the said provisors, their procurators, executors and notaries, shall be attached by their body, and brought in to answer; (7) and if they be convict, they shall abide in prison without being let to mainprize or bail, or otherwise delivered, till that they have made fine and ransom to the king at his will, and free to the party that shall feel himself grieved. (8) And nevertheless before that they be delivered, they shall make full renunciation, and find sufficient surety that they shall not attempt such things in time to come, nor sue any process by them, nor by other, against any man in the court of *Rome*, nor in any party elsewhere, for any such imprisonments or renunciations, nor any other thing depending of them.

Fitz. premunire, 9, 12.

Stat. 5. " And in case that such provisors, procurators, executors, or notaries be not found, that the exigent shall run against them by due process, and that writs shall go forth to take their bodies in what parts they

be found, as well at the king's suit, as at the suit of the party, (2) and that in the mean time the king shall have the profits of such benefices so occupied by such provisors, except abbeys, priories, and other houses, which have colleges or convents, and in such houses the colleges and convents shall have the profits; saving always to our lord the king, and to all other lords, their old right. (3) And this statute shall have place as well of reservations, collations, and provisions made and granted in times past against all them which have not yet obtained corporal possession of the benefices granted to them by the same reservations, collations, and provisions, as against all other in time to come. And this statute ought to hold place and to begin at the said *utis*.”

Raft. 465,
13 R. 2, stat. 1,
c. 1.
13 R. 2, stat.
2, c. 2.
16 R. 2, c. 5.

STAT. 27 Ed. 3, ft. 1, c. 1, [A. D. 1353, intituled] “Præmunire for suing in a foreign realm, or impeaching of judgment given.”

“First, because it is shewed to our lord the king, by the grievous and clamorous complaints of the great men and commons aforesaid, how that divers of the people be, and have been drawn out of the realm to answer of things, whereof the cognizance pertaineth to the king's court; (2) and also that the judgments given in the same court be impeached in another court, in prejudice and disherison of our lord the king, and of his crown, and of all the people of his said realm, and to the undoing and destruction of the common law of the same realm at all times used. (3) Whereupon good deliberation had with the great men and other of his said council, it is assented and accorded by our lord the king, and the great men and commons aforesaid, that all the people of the king's ligeance, of what condition that they be, which shall draw any out of the realm in plea, whereof the cognizance pertaineth to the king's court, or of things whereof judgments be given in the king's court, or which do sue in any other court, to defeat or impeach the judgments given in the king's court, shall have a day, containing the space of two months, by warning to be made to them in the place where the possessions be, which be in debate, or otherwise, where they have lands or other possessions, by the sheriffs or other the king's ministers, to appear before the king and his council, or in his chancery, or before the king's justices in his places of the one bench or the other, or before other the king's justices, which to the same shall be deputed, to answer in their proper persons to the king, of the contempt done in this behalf. (4) And if they come not at the said day in their proper person to be at the law, they, their procurators, attornies, executors, notaries, and maintainors, shall from that day forth be put out of the king's protection, and their lands, goods, and chattels forfeit to the king, and their bodies, wheresoever they may be found, shall be taken and imprisoned, and ransomed at the king's will; (5) and upon the same a writ shall be made to take them by their bodies, and to seize their lands, goods, and possessions, into the king's hands; (6) and if it be returned, that they be not found, they shall be put in exigent, and outlawed.

4 Inst. 86.
3 Inst. 120,
125.
11 Co. 63.
12 Co. 37.
2 Rol. 317.
14 H. 4, f. 14.
2 R. 3, f. 17.
5 Ed. 4, f. 6.
9 Ed. 4, f. 3.
Fitz. Præ-
mun. 5, 6, 10.
39 Ed. 3, f. 7.
43 Ed. 3, f. 6.
Bro. Attur-
ney, 48, 53.
104.
11 Co. 34.
44 Ed. 3, f. 7;
36.
1 Lev. 241,
242.
38 Ed. 3, stat.
2, c. 3.

Appearance of the offender after two months will save his outlawry, but not his lands or goods.

Sett. 2. " Provided always, that at what time they come before they be outlawed, and will yield them to the king's prison to be justified by the law, and to receive that which the court shall award in this behalf, that they shall be thereto received; the forfeiture of the lands, goods, and chattles abiding in their force, if they do not yield them within the said two months, as afore is said.

Regist. 180.
Rast. 24, 465.

STAT. 3 *Rich.* 2, c. 3. [*A. D.* 1379, intituled] "None shall take any benefice of an alien, or convey money to him."

4 Inst. 51. f. 5.
Enforced by
7 R. 2, c. 12.

The causes why advowsons of benefices were given to spiritual persons. The inconveniences which have ensued by giving of benefices to aliens.

"Item, because that our lord the king hath perceived, as well by the complaints of his faithful liege people, and by their clamour by divers petitions therefore delivered in divers parliaments before this time, as otherwise by the perfect knowledge and experience of the deed, how the churches cathedral and collegial, abbeyes and priories, and other benefices of his realm, which were late founden, and richly endowed by his noble progenitors, in which divers dignities, offices, parsonages, chanonries, prebends, and other benefices, were solemnly and devoutly ordained and established of the assent of the foresaid progenitors of the king, and of other their noble founders, which did give to the said pastors of the same churches, abbeyes, priories, and of other great places, the advowsons of the same benefices, to the intent that the same benefices should be given to honest and meet persons of the realm, to serve and honour God diligently, and also to keep hospitality, and to inform and teach the people, and to do other worthy things pertaining to the cure of souls, after the estate and quality of the said benefices: (2) and so was it done in all times past after the foundation of the same, till now of late, that by the informations, instigations, and procurements of some of the king's liege people, the same benefices have been given, against the will of the founders, to divers people of another language, and of strange lands and nations, and sometime to the utter enemies of the king and of his realm, which never made residence in the same, nor cannot, may not nor will not in such wise bear and perform the charges of the same benefices, as in hearing confessions, preaching, nor teaching the people, keeping hospitality, nor accomplishing the other things necessary to the governance of the same benefices, but only thereof have and take the emoluments and temporal profits, not having regard to the spiritual cure, nor to other charges to the same benefices pertaining or belonging, but manifestly suffer the noble buildings in old times there made, when the same benefices were occupied by *Englishmen*, wholly to fall to decay, whereby the divine service is greatly minished, the cure of souls neglected and left, the clergy enfeebled, the treasure of the said realm carried to the hands of aliens, and all the estate of holy church brought to less reverence than before it was wont to be: (3) and though that in the time of the said grandfather certain ordinances, statutes, and compositions were made and affirmed, wholly to put out, or at the least to restrain the said mischiefs in this behalf: nevertheless the said aliens, not having regard to the same, do not refrain

25 Ed. 3, stat.
6.

to take and receive such benefices within the said realm, but by the comfort, aid, and great succour which they have had of the king's liege people, that be their fermors, procurators, and attornies in this behalf, and in every part of the said realm, do enforce themselves from day to day more and more to accept the greatest dignities and benefices within the said realm, and by divers cautelous manners, much prejudicial to the same realm if that were suffered, whereby the said mischiefs do daily increase, and much more will increase, if due remedy be not the sooner provided "

1 *Stat.* 2. " Our lord the king, by the advice and common assent of all the lords temporal being in this parliament, hath ordained and established, that none of the king's liege people, nor other person, of whatsoever estate or condition that he be, shall not take nor receive within the same realm of *England*, procuracy, letter of attorney, nor ferm, nor other administration by indenture, nor in any other manner whatsoever of any person of the world, of any benefice within the said realm, but only of the king's liege people of the same realm, without the special grace and express licence of our lord the king, by the advice of his counsel. (2) And if any before this time have accepted of any aliens such procuracies, ferms, or administration, that they shall utterly leave them within forty days after publication of this ordinance. (3) And that none of the said liege people, nor other that may be found in the said realm, shall convey by virtue of such procuracy, ferm, or administration, gold, silver, nor other treasure nor commodity out of the said realm by letter of exchange, by merchandise, nor in other manner to the profit of the said aliens, without like licence of the king by the advice of his said counsel ; (4) and if any do the contrary in any point contained in this ordinance, he shall incur the pain and punishment contained in the statute of provisors, made in the time of the king's grandfather, the seven and twentieth year of his reign, by the same process comprised in the said statute, (5) and by warning to be made to them in their benefices, or other their possessions within the realm ; (6) and if they be out of the said realm, and not beneficed, nor having possession within the same realm where they may be warned, then a writ shall be made in the chancery grounded upon this ordinance to the sheriff of *London*, or to the sheriff of the county in which they were or shall be born, at the king's suit, returnable in the one bench or the other, by which writ it shall be commanded, that proclamation be made openly, that they appear before the justices in the bench where the writ is returnable at a certain day comprised in the same writ, containing the space of half a year, to answer upon the matters comprised in the said writ ; (7) and after this writ returned, the justices shall proceed against them according to the form above ordained. (8) And it is assented by the king in the same parliament, by the assent aforesaid, that no bishop, nor other person of holy church through the realm; shall meddle by way of sequestration, nor in any other manner, with the fruits of such benefices given or to be given to the said aliens, to the profit of the same aliens, upon the peril that belongeth. Dated, &c."

None shall take in ferm any benefices of the church of an alien without the king's licence.

None shall convey money out of the realm for such ferm.

St. an. 27 Ed. 3. de provisoribus.

Process awarded against offenders that are out of the realm.

None shall meddle by sequestration, nor in other manner, with a benefice given to an alien.

1 H. 5. c. 7.

STAT. 7 *Rich. 2, c. 12.* [*A. D. 1383, intituled*] “No alien shall purchase or occupy any benefice of the church within this realm.”

A confirmation of the statute of 3 R. 2, c. 3.

25 Ed. 3, Stat. 5, c. 22.

The cardinal of Naples excepted.

“Item, Whereas late in the parliament holden at *Westminster*, the third year of the reign of our said lord the king, at the request of the commons, and by the assent of the lords temporal, it was ordained and assented, and upon a grievous pain prohibited, that no subject of the king nor other person, of what estate or condition he were, should take, neither receive from thenceforth, within the realm of *England*, procuracy, letter of attorney, ne ferm, nor any other administration by indenture, or in any other manner, of any person concerning any benefice of holy church within the realm, but only of the king’s subjects of the same realm, without the especial grace and express licence of our said lord the king, upon a certain pain contained in the said statute; (2) it is assented and agreed by the same lords, that the same statute shall keep his force and effect in all points. (3) And moreover it is assented, that if any alien have purchased, or from henceforth shall purchase any benefice of holy church, dignity, or other thing, and in his proper person take possession of the same, or occupy it himself within the realm, whether it be to his own proper use, or to the use of another, without especial licence of the king, he shall be comprised within the same statute: (4) and moreover shall incur all pains and forfeitures in all points as is before ordained by another statute made the five and twentieth year of the noble king *Edward* the third, grandfather to our lord the king that now is, against them that purchase provisions of abbeys or priories. (5) And to the intent that such licences shall not be from henceforth made, the king willeth and commandeth to all his subjects and other, that they shall abstain them from henceforth to pray him for any such licence to be given. (6) And also the king himself will refrain to give any such licence during the wars, except to the cardinal of *Naples*, or to some other spiritual person to whom the king is beholden for a special cause.”

STAT. 13 *Rich. 2, c. 2.* [*A. D. 1389, intituled*] “A confirmation of the statute of provisors, made *Anno 25 Ed. 3, Stat. 6*, and the forfeiture of him that accepteth a benefice contrary to that statute.”

1 Roll. 10, 92. “Item, Whereas the noble king *Edward*, grandfather to our lord the king that now is, at his parliament holden at *Westminster* at the *ut*as of the purification of our Lady, the five and twentieth year of his reign, caused to be rehearsed the statute made at *Carlisle* in the time of king *Edward*, son of king *Henry*, touching the estate of the holy church of *England*; the said grandfather of the king that now is, by the assent of the great men of his realm, being in the same parliament, holden the said five and twentieth year, to the honour of God and of holy church, and of all his realm, did ordain and establish, that the free elections of archbishopricks, bishopricks, and all other dignities and benefices elective in *England*, should

should hold from thenceforth in the manner as they were granted by his progenitors, and by the ancestors of other lords founders: (2) and that all prelates and other people of holy church, which had advowsons of any benefices of the gift of the king, or of his progenitors, or of other lords and donors, should freely have their collations and presentments; and thereupon a certain punishment was ordained in the same statute for them which accept any benefices or dignity contrary to the said statute made at *Westminster* the said twenty-fifth year, as afore is said; which statute our lord the king hath caused to be recited in this present parliament at the request of his commons in the same parliament, the tenor whereof is such as hereafter followeth: "Whereas late in the parliament of good memory of *Edward* king of *England*," &c. [rehearsing the whole statute made the said twenty-fifth year] And then thus: (3) "Our lord the king that now is, of the assent of the great men of his realm, being in this present parliament, hath ordained and established, that for all archbishopricks, bishopricks, and other dignities and benefices elective, and all other benefices of holy church, which shall begin to be void in deed the twenty-ninth day of *January*, the thirteenth year of the reign of our lord king *Richard* that now is, or after, or which shall be void in time to come within the realm of *England*, the said statute made the said twenty-fifth year shall be firmly holden for ever, and put in due execution from time to time in all manner of points. (4) And if any do accept of a benefice of holy church contrary to this statute, and that duly proved, and be beyond the sea, he shall abide exiled and banished out of the realm for ever; his lands and tenements, goods and chattles shall be forfeited to the king; (5) and if he be within the realm, he shall be also exiled and banished, as afore is said, and shall incur the same forfeiture, and take his way, so that he be out of the realm within six weeks next after such acceptance. (6) And if any receive any such person banished coming from beyond the sea, or being within the realm after the said six weeks, knowing thereof, he shall be also exiled and banished, and incur such forfeiture as afore is said. (7) And that their procurators, notaries, executors, and summoners have the pain and forfeiture afore said."

Stat. 2. "Provided nevertheless, that all they to whom the pope of *Rome*, or his predecessors, have provided any archbishoprick, bishoprick, or other dignity, or other benefices of holy church, of the patronage of people of holy church, in respect of any voidance before the said twenty-ninth day of *January*, and thereof were in actual possession before the same twenty-ninth day, shall have and enjoy the said archbishopricks, bishopricks, dignities, and other benefices peaceably for their lives, notwithstanding the statutes and ordinances afore said. (2) And if the king send by letter, or in other manner to the court of *Rome*, at the intreaty of any person, or if any other send or sue to the same court, whereby any thing is done contrary to this statute, touching any archbishoprick, bishoprick, dignity, or other benefice of holy church within the said realm, if he that maketh such motion or suit be a prelate of holy church, he shall pay to the king the value of his temporalities of one year; (3) and if he be a temporal lord, he shall

For all benefices which shall be void after the 29th of January, An. 13, R. 2, stat. 2, c. 2, the statute of 25 Ed. 3, stat. 6, of provisors, shall be put in execution.

If any do accept of a benefice contrary to the said statute of 25 Ed. 3, stat. 6, he shall be banished the realm.

The punishment of the receivers, procurators, &c. of offenders. Beneficed persons, upon whom the pope had before given dignities of the church excepted.

The penalty for suing to the court of *Rome* to infringe the purport of this statute.

Benefices full
of an incum-
bent 29 die
Jan. ann. 13.
R. 2, stat. 1,
c. 1.
Raib. 465.

pay to the king the value of his lands and possessions not moveable of one year; (4) and if he be another person of a more mean estate, he shall pay to the king the value of the benefice for which suit is made, and shall be imprisoned one year. (5) And it is the intent of this statute, that of all dignities and benefices of holy church, which were void in deed the said twenty-ninth day of *January*, which be given, or to whom it is provided by the pope of *Rome* before the same twenty-ninth day, that they to whom such gifts or provisions be made, may freely of such gifts and provisions sue execution without offence of this statute. (6) Provided always, that of no dignity or benefice which was full the said twenty-ninth day of *January*, no man, because of any collation, gift, reservation and provision, or other grace papal, not executed before the said twenty-ninth day, shall sue thereof execution, upon the pains and forfeitures contained in this present statute."

STAT. 16 *Rich. 2, c. 5.* [*A. D. 1392. intituled*] "Præmunere for purchasing bulls from *Rome*. The crown of *England* subject to none."

1 Leon. 292.
12 Co. 37. 40.
The remedy
to recover
presentments
to benefices in
the king's
court, and the
execution
thereof, is
done by the
bishop.

"Item, Whereas the commons of the realm in this present parliament have shewn to our redoubted lord the king, grievously complaining, that whereas the said our lord the king, and all his liege people ought of right, and of old time were wont to sue in the king's court, to recover their presentments to churches, prebends, and other benefices of holy church, to the which they had right to present, the cognisance of plea of which presentment belongeth only to the king's court of the old right of his crown, used and approved in the time of all his progenitors kings of *England*; (2) and when judgment shall be given in the same court upon such a plea and presentment, the archbishops, bishops, and other spiritual persons which have institution of such benefices within their jurisdiction, be bound, and have made execution of such judgments by the king's commandments of all the time aforesaid without interruption (for another lay-person cannot make such execution) and also be bound of right to make execution of many other of the king's commandments, of which right the crown of *England* hath been peaceably seized, as well in the time of our said lord the king that now is, as in the time of all his progenitors till this day; (3) but now of late divers processess be made by the bishop of *Rome*, and censures of excommunication upon certain bishops of *England*, because they have made execution of such commandments, to the open disherison of the said crown, and destruction of our said lord the king, his law, and all his realm, if remedy be not provided. (4) And also it is said, and a common clamour is made, that the said bishop of *Rome* hath ordained and purposed to translate some prelates of the same realm, some out of the realm, and some from one bishoprick into another within the same realm, without the king's assent and knowledge, and without the assent of the prelates, which so shall be translated, which prelates be much profitable and necessary to our said lord the king, and to all his realm; (5) by which translations (if they should be suffered) the statutes

The pope a-
warded pro-
cesses and sen-
tences of ex-
communica-
tion against
certain
bishops for
executing
judgments
given in the
king's court.
The pope's
translation of
prelates out of

of.

of the realm, should be defeated and made void; and his said liege sages of his counsel, without his assent, and against his will, carried away and gotten out of his realm, and the substance and treasure of the realm shall be carried away, and so the realm destitute as well of council as of substance, to the final destruction of the same realm; (6) and so the crown of *England*, which hath been so free at all times, that it hath been in no earthly subjection, but immediately subject to God in all things touching the regality of the same crown, and to none other, should be submitted to the pope, and the laws and statutes of the realm by him defeated and avoided at his will, in perpetual destruction of the sovereignty of the king our lord, his crown, his regality, and of all his realm, which God defend.

Sett. 2. And moreover, the commons aforesaid say, that the said things so attempted be clearly against the king's crown and his regality, used and approved of the time of all his progenitors; wherefore they and all the liege commons of the same realm will stand with our said lord the king, and his said crown, and his regality, in the cases aforesaid, and in all other cases attempted against him, his crown and his regality in all points, to live and to die. (2) And moreover they pray the king, and him require by way of justice, that he would examine all the lords in the parliament, as well spiritual as temporal severally, and all the states of the parliament, how they think of the cases aforesaid, which be so openly against the king's crown, and in derogation of his regality, and how they will stand in the same cases with our lord the king, in upholding the rights of the said crown and regality. (3) Whereupon the lords temporal so demanded, have answered every one by himself, that the cases aforesaid be clearly in derogation of the king's crown, and of his regality, as it is well known, and hath been of a long time known, and that they will be with the same crown and regality in these cases specially, and in all other cases which shall be attempted against the same crown and regality in all points, with all their power. (4) And moreover it was demanded of the lords spiritual there being, and the procurators of others being absent, their advice and will in all these cases; which lords, that is to say, the archbishops, bishops, and other prelates being in the said parliament severally examined, making protestations, that it is not their mind to deny, nor affirm, that the bishop of *Rome* may not excommunicate bishops, nor that he may make translation of prelates after the law of holy church, answered and said, that if any executions of processes made in the king's court, as before, be made by any, and censures of excommunications to be made against any bishops of *England*, or any other of the king's liege people, for that they have made execution of such commandments; and that if any executions of such translations, be made of any prelates of the same realm, which prelates be very profitable and necessary to our said lord the king, and to his said realm, or that the sage people of his council, without his assent, and against his will, be removed and carried out of the realm, so that the substance and treasure of the realm may be consumed, that the same is against the king and his crown, as it is contained in the petition.

the realm, or from one spiritual living to another.

25 Ed. 3, stat. 6, de provis

The freedom of the crown of *England*, and that it is in subjection, to no realm.

The promise of the commons to assist the king in defence of the liberties of his crown.

The like promise of the lords temporal.

The promise of the lords spiritual touching the commons petition.

The promise
of the procu-
rators of the
lords spiritual
being absent.

Præmunere
for purchasing
of bulls or
other instru-
ments from
Rome, or
elsewhere.

27 Ed. 3,
stat. 1, c. 1.
7 R. 2, c. 12.
5 Ed. 4, f. 6.
9 Ed. 4, f. 3.

Regist. jud.
82. Co. pla.
435. Rast.
24, 465.

petition before named. (5) And likewise the same procurators, every one by himself examined upon the said matters, have answered and said in the name, and for their lords, as the said bishops have said and answered, and that the said lords spiritual will and ought to be with the king in these cases in lawfully maintaining of his crown, and in all other cases touching his crown and his regalty, as they be bound by their liegance; (6) whereupon our said lord the king, by the assent aforesaid, and at the request of his said commons, hath ordained and established, that if any purchase or pursue, or cause to be purchased or pursued in the court of *Rome*, or elsewhere, by any such translations, processes, and sentences of excommunications, bulls, instruments, or any other things whatsoever which touch the king, against him, his crown, and his regalty, or his realm, as is aforesaid, and they which being within the realm, or them receive, or make thereof notification, or any other execution whatsoever within the same realm or without, that they, their notaries, procurators, maintainers, abettors, fautors, and counsellors, shall be put out of the king's protection, (7) and their lands and tenements, goods and chattles, forfeit to our lord the king; (8) and that they be attached by their bodies, if they may be found, and brought before the king and his council, there to answer to the cases aforesaid, (9) or that process be made against them by *Præmunere facias*, in manner as it is ordained in other statutes of provisors; (10) and other which do sue in any other court in derogation of the regalty of our lord the king.

STAT. 7 *Hen. 4*, c. 8. [*A. D. 1405. intituled*] "No provision, licence, or pardon shall be granted of a benefice full of an incumbent."

Item, To eschew many dissentions, discords, and debates, and divers other mischiefs very like to rise and grow because of many provisions made, and to be made, by the pope, and also in respect of licences granted upon the same by the king our sovereign lord; it is ordained and established, that no licence or pardon so granted before this time, nor to be granted in time to come, shall be available to any benefice full of any incumbent, at
3 H. 5, c. 4 the day of the date of such licence or pardon granted.

STAT. 3 *Hen. 5*, c. 4. [*A. D. 1415. intituled*] "All provisions, licences and pardons of a benefice full of an incumbent shall be void."

7 H. 4, c. 8. Item, Wheareas in the time of king *Henry* the fourth, father to our
1 Roll, 453. sovereign lord, whom God forgive, the seventh year of his reign, to eschew many discords and debates, and divers other mischiefs which were likely to rise and happen, because of many provisions then made, or to be made, by the pope, and also of licences thereupon granted by the said late king, amongst other things it was ordained and established, that no licence or pardon so granted before the same ordinance, nor after to be granted, should be available to any benefice full of an incumbent at the day of the date of such licence or pardon granted: (2) notwithstanding several persons

persons having provisions of the pope of divers benefices in *England*; and elsewhere, and licences royal to execute the said provisions, have, by colour of the same provisions, licences, and acceptations of the said benefices, subtilly excluded divers persons of their benefices, in which they have been incumbents by a long season, of the collations of the patrons spiritual, to them duly made to their intent, to the utter destruction and subversion of the estates of the said incumbents: (3) the king willing to remove such mischief, hath ordained and established, that all the incumbents of every benefice of holy church, of the patronage, collation, or presentation of spiritual patrons, may peaceably and quietly enjoy, and shall enjoy their said benefices, without being inquieted, molested, or any wise grieved by any colour of such provisions, licences, and acceptations whatsoever; (4) and that all the licences and pardons upon and by such provisions made in any manner, shall be void and of no value. (5) And if any feel himself grieved, molested, or inquieted in any wise from henceforth by any by colour of such provisions, licences, pardons, or acceptations, that the same molesters, grievors, and inquieters, and every of them, shall suffer and incur the pain and punishments contained in the statutes of provisors before this time made, and that by process of *paemunire facias* formed upon the case; (6) and that the party which shall sue by the same writ, shall recover his treble damages, if the defendants named in the same writ, or any of them, be convict in that behalf.”

STAT. 3 & 4 Ed. 6, c. 10, [A. D. 1549, intituled] “An act for abolishing and putting away divers books and images.”

“Where the king’s most excellent majesty hath of late set forth, and established by authority of parliament, an uniform, quiet and godly order of common and open prayer, in a book intituled, *The Book of Common Prayer, and administration of the sacraments, and other rites and ceremonies after the church of England*, to be used and observed in the said church of *England*, agreeable to the order of the primitive church, much more comfortable unto his loving subjects, than other diversity of service, as heretofore of long time hath been used, being in the said book ordained nothing to be read but the very pure word of God, or which is evidently grounded upon the same; (2) and in the other, things corrupt, untrue, vain, and superstitious, and as it were a preparation to superstition; which for that they be not called in, but permitted to remain undefaced, do not only give occasion to such perverse persons as do impugn the order and godly meaning of the king’s said book of common prayer, to continue in their old accustomed superstitious service, but also minister great occasion to diversity of opinions, rites, ceremonies and services: (3) be it therefore enacted by the king our sovereign lord, the lords spiritual and temporal, and the commons in this present parliament assembled, That all books called *Antiphoners, Missals, Grailes, Processionals, Manuals, Legends, Pies, Portuasses, Primers in Latin and English, Couchers, Journals, Ordinals*, or other books or writings whatsoever heretofore used for service of the church,

Certain books and images shall be abolished. 2 & 3 Ed. 6, c. 1. 3 Jac. 1, c. 5.

church, written or printed in the *English* or *Latin* tongue, other than such as shall be set forth by the king's majesty, shall be by authority of this present act clearly and utterly abolished, extinguished, and forbidden for ever to be used or kept in this realm, or elsewhere within any the king's dominions.

Images taken out of, or yet remaining in churches, shall be destroyed.

Popish books shall be first delivered to the mayor, &c. and then by him to the bishop, &c. to be burnt or otherwise defaced.

Seet. 2. " And be it further enacted by the authority aforesaid, That if any person or persons, of what estate, degree or condition soever he, she or they be, bodies politick or corporate, that now have, or hereafter shall have in his, her, or their custody, any the books or writings of the sorts aforesaid, or any images of stone, timber, alabaster, or earth, graven, carved or painted, which heretofore have been taken out of any church or chapel, or yet stand in any church or chapel, and do not before the last day of *June* next ensuing, deface and destroy, or cause to be defaced and destroyed the same images, and every of them, and deliver, or cause to be delivered all and every the same books to the mayor, bailiff, constable or churchwardens of the town where such books then shall be, to be by them delivered over openly within three months next following after the said delivery, to the archbishop, bishop, chancellor, or commissary of the same diocess, to the intent the said archbishop, bishop, chancellor, or commissary, and every of them, cause them immediately after, either to be openly burnt, or otherwise defaced and destroyed, shall for every such book or books willingly retained, in his, her or their hands or custody within this realm, or elsewhere within any the king's dominions, and not delivered, as is aforesaid, after the said last day of *June*, and be thereof lawfully convict, forfeit and lose to the king our sovereign lord, for the first offence 20s. and for the second offence shall forfeit and lose (being thereof lawfully convict) 40s. li. and for the third offence, shall suffer imprisonment at the king's will.

The penalty of mayor, &c. or bishop, &c. omitting their duty herein.

Seet. 3. " And be it further enacted by the authority aforesaid, That if any mayors, bailiffs, constables or churchwardens, do not within three months after receipt of the same books, deliver, or cause to be delivered such books so by them received, to the archbishop, bishop, chancellor, or commissaries of their diocess; and if the said archbishop, bishops, chancellor, or commissaries, do not within forty days after the receipt of such books, burn, deface and destroy, or cause to be burned, defaced or destroyed the same books, and every of them; (3) that then they and every of them so offending, shall lose and forfeit to our sovereign lord the king, being thereof lawfully convict, 40s. li. (4) The one half of all which forfeitures shall be to any of the king's subjects that will sue for the same in any of the king's courts of record, by bill, plaint, action of debt, or information: in which action no essoin, protection, wager of law, or other delay shall be allowed.

Justices of assize and peace shall hear and determine these offences.

Seet. 4. " And for better execution of the said act, be it enacted by the authority aforesaid, That as well justices of assize in their circuits, as justices of peace within the limits of their commission in the general sessions, shall have full power and authority to enquire of the offences aforesaid,

and to hear and determine the same, in such form as they may do in other such like cases.

Sett. 5. " Provided always, That this act, or any thing therein contained, shall not extend to any image or picture, set or graven upon any tomb in any church, chapel, or church-yard, only for a monument of any king, prince, nobleman, or other dead person, which hath not been commonly reputed and taken for a saint; but that all such pictures and images may stand and continue in like manner and form as if this act had never been had nor made; any thing in this act to the contrary in any wise notwithstanding.

Images upon
tombs shall
still remain.

Sett. 6. " Provided also, and be it enacted by the authority aforesaid, That any person or persons may use, keep, have and retain any *Primers* in the *English* or *Latin* tongue, set forth by the late king of famous memory, king *Henry* the Eighth, so that the sentences of invocation, or prayer to saints in the same *Primers* be blotted, or clearly put out of the same; any thing in this act to the contrary notwithstanding. *Repealed by* 1 *Ma. Seff.* 2, c. 2. *Which act is repealed by* 1 *Ja.* 1, c. 25, s. 48.

Primers set
out by H. 8,
being purged,
may be still
retained.

STAT. 1 *Eliz.* c. 2, see this act under title **Common Prayer**, vol. 1, page 676.

STAT. 5 *Eliz.* c. 1, [*A. D.* 1562, intituled] " An act for the assurance of the queen's royal power over all estates and subjects within her dominions."

" For preservation of the queen's most excellent highness, her heirs and successors, and the dignity of the imperial crown of this realm of *England*, and for avoiding both of such hurts, perils, dishonours and inconveniences, as have before-time befallen, as well to the queen's majesty's noble progenitors, kings of this realm, as for the whole estate thereof, by means of the jurisdiction and power of the see of *Rome*, unjustly claimed and usurped within this realm and the dominions thereof, and also of the dangers by the fautors of the said usurped power, at this time grown to marvellous outrage and licentious boldness, and now requiring more sharp restraint and correction of laws, than hitherto in the time of the queen's majesty's most mild and merciful reign have been had, used, or established:

Sett. 2. " Be it therefore enacted, ordained, and established by the queen our sovereign lady, and the lords spiritual and temporal, and the commons in this present parliament assembled, and by the authority of the same, That if any person and persons, dwelling, inhabiting, or resident within this realm, or within any other the queen's dominions, seignories, or countries, or in the marches of the same, or elsewhere, within or under her obedience and power, of what estate, dignity, preheminance, order, degree, or condition soever he or they be, after the first day of *April*, which shall be in the year of our Lord God one thousand five hundred sixty-three, shall by writing, cyphering, printing, preaching, or teaching, deed or act, advisedly and wittingly, hold or stand with, to extol,

set forth, maintain, or defend the authority, jurisdiction or power of the bishop of *Rome*, or of his see, heretofore claimed, used, or usurped within this realm, or in any dominion or country, being of, within or under the queen's power or obedience; (2) or by any speech, open deed or act, advisedly and wittingly attribute any such manner of jurisdiction, authority, or preheminance to the said see of *Rome*, or to any bishop of the same see for the time being, within this realm, or in any the queen's dominions or countries: (3) that then every such person or persons so doing or offending, their abettors, procurers and counsellors, and also their aiders, assistants, and comforters, upon purpose, and to the intent to set forth, further, and extol the said usurped power, authority or jurisdiction of any of the said bishop or bishops of *Rome*, and every of them, being thereof lawfully indicted or presented within one year next after such offences by him or them committed, and being lawfully convicted or attainted at any time after, according to the laws of this realm, for every such default and offence, shall incur into the dangers, penalties, pains and forfeitures ordained and provided by the statute of provision and *præmunire*, made in the sixteenth year of the reign of king *Richard* the Second.

Sec. 3. "And it is also enacted by the authority aforesaid, That as well justices of assize in their circuits, as justices of peace within the limits of their commission and authorities, or two of every such justices of peace at the least, whereof one to be of the *quorum*, shall have full power and authority by virtue of this act, in their quarter or open sessions, to enquire of all offences, contempts and transgressions, perpetrated, committed or done contrary to the true meaning of the premisses, in like manner and form as they may of other offences against the queen's peace; (2) and shall certify every presentment afore them or any of them had or made concerning the same, or any part thereof, before the queen, her heirs and successors, in her or their court, commonly called the king's bench, within forty days next after any such presentment had or made, if the term be then open; and if not, at the first day of the full term next following the said forty days; (3) upon pain that every of the justices of assize, or justices of the peace, before whom such presentment shall be made, making default of such certificate contrary to this statute, to lose and forfeit for every such default, one hundred pounds to the queen's highness, her heirs and successors.

Sec. 4. "And it is enacted by the authority aforesaid, That the justices of the king's bench, as well upon every such certificate, as by enquiry before themselves, within the limits of their authorities, shall have full power and authority to hear, order and determine every such offence done or committed contrary to the true meaning of this present act, according to the laws of this realm, in such like manner and form to all intents and purposes, as if the person or persons, against whom any presentment shall be had upon this estatute, had been presented upon any matter or offence expressed in the said estatute made in the said sixteenth year of king *Richard* the Second.

Sec.

Señ. 5. " And moreover, be it enacted by the authority aforesaid, That These shall as well all manner of persons expressed and appointed in and by the act take the oath made in the first year of the queen's majesty's reign that now is, intituled, *An act restoring to the crown the ancient jurisdiction over the estate ecclesiastical and spiritual, and abolishing all foreign powers repugnant to the same*, to take the oath expressed and set forth in the same: (2) As all other persons which have taken, or shall take orders, commonly called *ordines sacros*, or ecclesiastical orders, have been, or shall be promoted, preferred or admitted to any degree of learning in any university within this realm or dominions to the same belonging: and all schoolmasters, and public and private teachers of children; (4) as also all manner of person and persons that have taken, or hereafter shall take any degree of learning in or at the common laws of this realm, as well utter-barresters as benchers, readers, ancients in any house or houses of court, (5) and all principal treasurers, and such as be of the grand company of every inn of chancery, and all attornies, protonotaries, and philizers towards the laws of this realm, (6) and all manner of sheriffs, escheators and feodaries, and all other person and persons which have taken, or shall take upon him or them, or have been or shall be admitted to any ministry or office, in, at, or belonging to the common law, or any other law or laws, of, to, or for the execution of them, or any of them, used or allowed, or at any time hereafter to be used or allowed within this realm, or any of the dominions or countries belonging, or which hereafter shall happen to belong to the crown or dignity of the same; (7) and all other officers or ministers of, or towards any court whatsoever, (8) and every of them, shall take and pronounce a corporal oath upon the evangelists, before he or they shall be admitted, allowed or suffered to take upon him or them to use, exercise, supply or occupy any such vocation, office, degree, ministry, room or service, as is aforesaid, and that in the open court whereunto he doth or shall serve or belong: (9) and if he or they do not, or shall not serve or belong to any ordinary or open court, then he or they shall take and pronounce the oath aforesaid, in an open place, before a convenient assembly, to witness the same, (10) and before such person or persons as have or shall have authority by common use or otherwise, to admit or call any such person or persons, as is aforesaid, to any such vocation, office, ministry, room or service, or else before such person or persons, as by the queen's highness, her heirs or successors, by commission under the great seal of *England*, shall be named or assigned, to accept and take the same according to the tenour, effect and form of the same oath *verbatim*, which is, and as it is already set forth to be taken in the aforesaid act, made in the first year of the queen's majesty's reign.

These shall take the oath set forth anno 1 Eliz. c. 1.

Takers of ecclesiastical orders.
Degrees in the universities.
School-masters.
Utter-barresters.
Benchers.
Readers.
Ancients.
Protonotaries.
Attornies.
Philizers.
Sheriffs.
Escheators.
Feodaries.
Officers at the common law.

Officer at any court.

1 El. c. 1.
The bishop may tender the oath to any spiritual person.

Señ. 6. " And also be it enacted by the authority of this present parliament, That every archbishop and bishop within this realm, and dominions of the same, shall have full power and authority by virtue of this act, to tender or minister the oath aforesaid, to every or any spiritual or ecclesiastical person within their proper diocese, as well in places and jurisdictions exempt, as elsewhere.

The lord
chancellor
may direct a
commission to
take the oath
of any person.

Seet. 7. " And be it enacted by the authority aforesaid, That the lord chancellor or keeper of the great seal of *England*, for the time being, shall and may at all times hereafter, by virtue of this act, without further warrant, make and direct a commission or commissions under the great seal of *England*, to any person or persons, giving them, or some of them thereby authority to tender and minister the oath aforesaid, to such person or persons, as by the aforesaid commission or commissions, the said commissioners shall be authorized to tender the same oath unto.

The penalty
for the first re-
fusai of the
oath.

Seet. 8. " And be it also further enacted by the authority of this present parliament, That if any person or persons appointed or compellable by this act, or by the said act made in the said first year to take the said oath; or if any person or persons, to whom the said oath, by any such commission or commissions shall be limited and appointed to be tendered, as is aforesaid, do or shall, at the time of the said oath so tendered, refuse to take or pronounce the said oath, in manner and form aforesaid, that then the party so refusing, and being thereof lawfully indicted or presented within one year next after any such refusal, and convicted or attainted at any time after, according to the laws of this realm, shall suffer and incur the dangers, penalties, pains and forfeitures, ordained and provided by the statute of provision and *præmunire* aforesaid, made in the sixteenth year of the reign of king *Richard* the Second.

Certificate of
refusal into
the king's
bench.
Savil, 47.

Seet. 9. " And furthermore, be it enacted by the authority aforesaid; That all and every such person and persons, having authority to tender the oath aforesaid, shall within forty days next after such refusal or refusals of the said oath, if the term be then open: and if not, then at the first day of the full term next following the said forty days, make true certificate under his or their seal or seals, of the names, places and degrees of the person or persons so refusing the same oath, before the queen, her heirs or successors, in her or their court, commonly called the king's bench; (2) upon pain that every of the said persons, having such authority to tender the said oath, making default of such certificate, shall for every such default, forfeit an hundred pounds to the queen's highness, her heirs or successors: (3) and that the sheriff of the county, where the said court, commonly called the king's bench, shall for the time be holden, shall or may, by virtue of this act, impanel a jury of the same county, to enquire of and upon every such refusal and refusals; (4) which jury shall or may, upon every such certificate, and other evidence to them in that behalf to be given, by virtue of this act, proceed to indict the person and persons so offending in such sort and degree, to all intents and purposes, as the same jury may do of an offence or offences against the queen's majesty's peace, perpetrated, committed or done within the same county, of and for which the same jury is so impanelled.

Dyer 234.

Indictment of
the offender.

Seet. 10. " And for stronger defence and maintenance of this act, it is further ordained, enacted and established by the authority aforesaid, That if any such offender or offenders, as is aforesaid, of the first part or branch of this estatute, that is to say, by writing, cyphering, printing, preaching or teaching, deed or act, advisedly and wittingly hold or stand with, to extol,

extol, set forth, maintain or defend the authority, jurisdiction or power of the bishop of *Rome*, or of his see, heretofore claimed, used or usurped within this realm, or in any dominion or country being of, within or under the queen's power or obedience : (2) or by any speech, deed or act, advisedly and wittingly attribute any such manner of jurisdiction, authority or preheminance to the said see of *Rome*, or to any bishop of the same see, for the time being, within this realm, or in any the queen's dominions or countries ; (3) or be to any such offender or offenders abetting, procuring or counselling, or aiding, assisting or comforting, upon purpose, and to the intent to set forth, further and extol the said usurped power, authority or jurisdiction, after such conviction and attainder as is aforesaid, do estfoons commit or do the said offences, or any of them, in manner and form aforesaid, and be thereof duly convicted and attainted, as is aforesaid :

Sett. 11. " And also, That if any the persons above-named and appointed by this act to take the oath aforesaid, do after the space of three months after the first tender thereof, the second time refuse to take and pronounce, or do not take and pronounce the same, in form aforesaid to be tendred, that then every such offender or offenders, for the same second offence and offences, shall forfeit, lose and suffer such like and the same pains, forfeitures, judgment and execution, as is used in cases of high treason. It shall be treason the second time to maintain the authority of the bishop or see of Rome, or to refuse the oath.

Sett. 12. " Provided always, That this act, nor any thing therein contained, nor any attainder to be had by force and virtue of this act, shall not extend to make any corruption of blood, the disinheriting of any heir, forfeiture of dower, nor to the prejudice of the right or title of any person or persons, other than the right or title of the offender or offenders, during his, her or their natural lives only. No corruption of blood, or forfeiture of dower for any attainder by this act.

Sett. 13. " And that it shall and may be lawful to every person and persons, to whom the right or interest of any lands, tenements or hereditaments, after the death of any such offender or offenders, should or might have appertained, if no such attainder had been, to enter into the same, without any *ouster le main* to be sued, in such sort as he or they might have done, if this act had never been had ne made.

Sett. 14. " Provided also, That the oath expressed in the said act made in the said first year, shall be taken and expounded in such form as is set forth in an admonition annexed to the queen's majesty's injunctions, published in the first year of her majesty's reign ; that is to say, to confess and acknowledge in her majesty, her heirs and successors, none other authority than that was challenged and lately used by the noble king *Henry* the Eighth, and king *Edward* the Sixth ; as in the said admonition more plainly may appear. How the oath expressed Ann. 1 El. 1, shall be expounded.

Sett. 15. " And be it enacted by the authority aforesaid, That this act shall be openly read and published, and declared at every quarter-sessions by the clerk of the peace, and at every leet and law-day by the steward of the court, and once in every term in the open hall of every house and houses of court and chancery, at the times, and by the persons thereunto In what courts and places this act shall be published.

to be limited and appointed by the lord chancellor or keeper of the great seal, for the time being.

Every knight, citizen and burgefs of the parliament, shall take the faid oath before the lord steward or his deputy. *Seft. 16.* " And be it further enacted, That every person which hereafter shall be elected or appointed a knight, citizen or burgefs, or baron for any of the five ports, for any parliament or parliaments hereafter to be holden, shall from henceforth, before he shall enter into the parliament house, or have any voice there, openly receive and pronounce the faid oath before the lord steward for the time being, or his deputy or deputies for that time to be appointed: (2) and that he which shall enter into the parliament house without taking the faid oath, shall be deemed no knight, citizen, burgefs nor baron for that parliament, nor shall have any voice, but shall be to all intents, constructions and purposes, as if he had never been returned nor elected knight, citizen, burgefs or baron for that parliament, and shall suffer such pains and penalties as if he had presumed to sit in the same without election, return or authority.

None of or above the degree of a baron shall be compelled to take the faid oath. *Seft. 17.* " Provided alway, That forasmuch as the queen's majesty is otherwise sufficiently assured of the faith and loyalty of the temporal lords of her high court of parliament; therefore this act, nor any thing therein contained, shall not extend to compel any temporal person, of or above the degree of a baron of this realm, to take or pronounce the oath above-said, nor to incur any penalty limited by this act, for not taking or refusing the same; any thing in this act to the contrary in any wise notwithstanding.

Charitable giving of alms to offenders, shall be no cause of forfeiture. *Seft. 18.* " Provided, and be it enacted by the authority aforesaid, That charitable giving of reasonable alms to any of the offender or offenders above specified, without fraud or covin, shall not be taken or interpreted to be any such abetment, procuring, counselling, aiding, assisting or comforting, as thereby the giver of such alms shall incur any pain, penalty or forfeiture appointed in this act.

Peers offending shall be tried by their peers. *Seft. 19.* " Provided also, and be it enacted by the authority of this present parliament, That if any peer of this realm shall hereafter offend, contrary to this act, or any branch or article thereof, that in that and all such case and cases they shall be tried by their peers, in such manner and form as in other cases of treasons they have used to be tried, and by none other means.

Who only shall be compelled to take the oath upon the second tender. *Seft. 20.* " Provided also further, and be it enacted, That no person shall be compelled by virtue of this act to take the oath above-mentioned, at or upon the second time of offering the same, according to the form appointed by this statute, except the same person hath been, is, or shall be an ecclesiastical person, that had, hath or shall have in the time of one of the reigns of the queen's majesty's most noble father, brother or sister, or in the time of the reign of the queen's majesty, her heirs or successors, charge, cure or office in the church; (2) or such person or persons as had, hath or hereafter shall have any office or ministry in any ecclesiastical court of this realm, under any archbishop or bishop, in any the times or reigns aforesaid; (3) or such person or persons as shall wilfully refuse to observe the orders and rites for divine service, that be authorized to be used and

observed

observed in the church of *England*, after that he or they shall be publicly by the ordinary, or some of his officers for ecclesiastical causes, admonished to keep and observe the same; (4) or such as shall openly and advisedly deprave by words, writings, or any other open fact, any of the rites and ceremonies at any time used, and authorised to be used in the church of *England*; (5) or that shall say or hear the private mass prohibited by the laws of this realm; (6) and that all such persons shall be compellable to take the oath upon the second tender or offer of the same, and incur the penalties for not taking of the said oath, and none other."

Stat. 21. "And forasmuch as it is doubtful, whether by the laws of this realm there be any punishment for such as kill or slay any person or persons attainted in or upon a *Præmunire*, (2) be it therefore enacted by authority aforesaid, That it shall not be lawful to any person or persons to slay or kill any person or persons in any manner attainted, or hereafter to be attainted, of, in or upon any *Præmunire*, by pretence, reason or authority of any judgment given, or hereafter to be given in or upon the same, or by pretence, reason or force of any word or words, thing or things contained or specified in any statute, or law of provision and *Præmunire*, or in any of them: any law or statute, or opinion or exposition of any law or statute to the contrary in any wise notwithstanding."

It is not lawful to slay one attainted in a *Præmunire*.
25 Ed. 3.
Stat. 5, c. 22.

Stat. 22. "Saving always the due execution of all and every person and persons attainted, or to be attainted for any offence whereupon judgment of death now is, or ought to be, or hereafter may lawfully be given, by reason of this statute, or otherwise: (2) and saving always all and every such pains of death, or other hurt or punishment as heretofore might, without danger of law, be done upon any person or persons that shall send or bring into this realm, or any other the queen's dominions, or within the same, shall execute any summons, sentence, excommunication, or other process against any person or persons from the bishop of *Rome*, for the time being, or by or from the see of *Rome*, or the authority or jurisdiction of the same see."

Punishments inflicted by former laws.

Stat. 23. "Provided always, and be it enacted by the authority aforesaid, That no person or persons shall hereafter be indicted for assisting, aiding maintaining, comforting or abetting of any person or persons for the said offences, in extolling, setting forth, or defending of the usurped power and authority of the bishop of *Rome*, unless he or they be thereof lawfully accused by such good and sufficient testimony or proof, as by the jury by whom he shall so be indicted, shall be thought good, lawful and sufficient, to prove him or them guilty of the said offences." 23 *El.* c. 1.

Upon what proof only any person may be indicted.

Stat. 13 *Eliz.* c. 2. [*A. D.* 1570, intituled] "An act against the bringing in, and putting in execution of bulls, writings, or instruments and other superstitious things from the see of *Rome*."

"Where in the parliament holden at *Westminster*, in the fifth year of the reign of our sovereign lady the queen's majesty that now is, by one act and statute then and there made, intituled, An act for the assurance of the queen's

A rehearsal of the statute of: 5 *El.* c. 1, touching the queen's

abolishing of
the authority
of the bishop
and see of
Rome.

queen's majesty's royal power over all states and subjects within her highness's dominions, it is among other things very well ordained and provided, for the abolishing of the usurped power and jurisdiction of the bishop of *Rome*, and of the see of *Rome*, heretofore unlawfully claimed and usurped within this realm, and other the dominions to the queen's majesty belonging, that no person or persons shall hold or stand with, to set forth, maintain, defend or extol the same usurped power, or attribute any manner of jurisdiction, authority or preheminance to the same, to be had or used within this realm, or any the said dominions, upon pain to incur the danger, penalties and forfeitures ordained and provided by the statute of provision and præmunire, made in the sixteenth year of the reign of king *Richard* the Second, as by the same act more at large it doth and may appear: (2) and yet nevertheless, divers seditious and very evil-disposed people, without the respect of their duty to Almighty God, or of the faith and allegiance which they ought to bear and have to our said sovereign lady the queen, and without all fear and regard had to the said good law and statute, or the pains therein limited, but minding, as it should seem, very seditiously and unnaturally, not only to bring this realm, and the imperial crown thereof (being in very deed of itself most free) into the thralldom and subjection of that foreign, usurped, and unlawful jurisdiction, preheminance and authority claimed by the said see of *Rome*; (3) but also to estrange and alienate the minds and hearts of sundry her majesty's subjects from their dutiful obedience, and to raise and stir sedition and rebellion within this realm, to the disturbance of the most happy peace thereof; (4) have lately procured and obtained to themselves bulls brought from the said bishop of *Rome* and his said see divers bulls and writings, the effect whereof hath been, and is, to absolve and reconcile all those that will be contented to forsake their due obedience to our most gracious sovereign lady the queen's majesty, and to yield and subject themselves to the said feigned, unlawful and usurped authority; (5) and by colour of the said bulls and writings, the said wicked persons very secretly, and most seditiously, in such parts of this realm where the people for want of good instruction are most weak, simple and ignorant, and thereby farthest from the good understanding of their duties towards God and the queen's majesty, have by their lewd and subtil practices and persuasions, so far forth wrought, that sundry simple and ignorant persons have been contented to be reconciled to the said usurped authority of the see of *Rome*, and to take absolution at the hands of the said naughty and subtil practisers; (6) whereby hath grown great disobedience and boldness in many, not only to withdraw and absent themselves from all divine service, now most godly set forth and used within this realm, but also have thought themselves discharged of, and from all obedience, duty and allegiance, to her majesty, whereby most wicked and unnatural rebellion hath ensued, and to the further danger of this realm is hereafter very like to be renewed, if the ungodly and wicked attempts in that behalf be not by severity of laws in time restrained and bridled."

The effect of
bulls brought
from Rome.

Señ. 2. "For remedy and redress whereof, and to prevent the great mischief and inconveniencies that thereby may ensue, be it enacted by the queen's most excellent majesty, with the assent of the lords spiritual and temporal, and the commons in this present parliament assembled, and by the authority of the same, that if any person or persons, after the first day of July next coming, shall use, or put in use in any place within this realm, or in any the queen's dominions, any such bull, writing, or instrument written or printed, of absolution or reconciliation, at any time heretofore obtained and gotten, or at any time hereafter to be obtained or gotten from the said bishop of *Rome*, or any his successors, or from any other person or persons authorized, or claiming authority by or from the said bishop of *Rome*, his predecessors or successors, or see of *Rome*; (2) or if any person or persons after the said first day of *July*, shall take upon him or them, by colour of any such bull, writing, instrument, or authority, to absolve or reconcile any person or persons, or to grant or promise to any person or persons within this realm, or any other the queen's majesty's dominions, any such absolution or reconciliation, by any speech, preaching, teaching, writing or any other open deed: (3) or if any persons within this realm, or any the queen's dominions, after the said first day of *July*, shall willingly receive and take any such absolution or reconciliation:"

Putting in use any bull of absolution or reconciliation from the bishop of Rome.

Or Absolving or reconciling of any person, and being absolved or reconciled.

Señ. 3. "Or else, if any person or persons have obtained or gotten since the last day of the parliament holden in the first year of the queen's majesty's reign, or after the said first day of *July*, shall obtain or get from the said bishop of *Rome*, or any his successors or see of *Rome*, any manner of bull, writing or instrument, written or printed, containing any thing, matter or cause whatsoever: (2) or shall publish, or by any ways or means put in use any such bull, writing or instrument; (3) that then all and every such act and acts, offence and offences, shall be deemed and adjudged by the authority of this act, to be high treason; (4) and the offender and offenders therein, their procurers, abettors and counsellors to the fact, and committing of the said offence or offences, shall be deemed and adjudged high traitors to the queen and the realm; (5) and being thereof lawfully indicted and attainted, according to the course of the laws of this realm, shall suffer pains of death, and also lose and forfeit all their lands, tenements, hereditaments, goods and chattles, as in cases of high treason by the laws of this realm ought to be lost and forfeited."

Getting of any bull from Rome, containing any matter whatsoever, or publishing or putting in use the same. 3 Inst. 101, 106.

Señ. 4. "And be it further enacted by the authority aforesaid, That all and every aiders, comforters, or maintainers of any the said offender or offenders, after the committing of any the said acts or offences, to the intent to set forth, uphold, or allow the doing or execution of the said usurped power, jurisdiction or authority, touching or concerning the premises, or any part thereof, shall incur the pains and penalties contained in the statute of *præmunire*, made in the sixteenth year of the reign of king *Richard* the second."

Aiders, comforters, and maintainers of offenders after the offence. 16 R. 2, c. 5.

Señ. 5. "Provided always, and be it further enacted by the authority aforesaid, That if any person or persons to whom any such absolution, reconciliation, bull, writing, or instrument, as is aforesaid, shall, after

Concealing, or not disclosing a bull, or re-

conciliation
offered.

the said first day of *July*, be offered, moved, or persuaded to be used, put in ure, or executed, shall conceal the same offer, motion, or persuasion, and not disclose and signify the same by writing, or otherwise, within six weeks then next following, to some of the queen's majesty's privy council, or else to the president or vice-president of the queen's majesty's council established in the north parts, or in the marches of *Wales*, for the time being, that then the same person or persons so concealing, and not disclosing, or not signifying the said offer, motion, or persuasion, shall incur the loss, danger, penalty and forfeiture of misprision of high treason:

Seet 6. " And that no person or persons shall at any time hereafter be impeached, molested, or troubled in or for misprision of treason, for any offence or offences made treason by this act, other than such as by this act are before declared to be in case of misprision of high treason.

Bringing into
the realm, or
using of *Agnus Dei*, pictures, crosses,
&c.

Seet 7. " And be it further enacted by the authority aforesaid, That if any person or persons shall at any time after the said first day of *July*, bring into this realm of *England*, or any the dominions of the same, any token or tokens, thing or things, called or named by the name of *Agnus Dei*, or any crosses, pictures, beads, or such-like vain and superstitious things, from the bishop or see of *Rome*, or from any person or persons authorized, or claiming authority by or from the said bishop or see of *Rome*, to consecrate or hallow the same; (which said *Agnus Dei* is used to be specially hallowed and consecrated, as it is termed, by the said bishop in his own person, and the said crosses, pictures, beads, and such-like superstitious things been also hallowed either by the same bishop, or by others having power, or pretending to have power for the same, by or from him or his said see) and divers pardons, immunities and exemptions granted by the authority of the said see, to such as shall receive and use the same: (2) and that if the same person or persons so bringing in, as is aforesaid, such *Agnus Dei*, and other-like things as have been before specified, shall deliver, or cause, or offer to be delivered the same, or any of them, to any subject of this realm, or of any the dominions of the same, to be worn or used in any wise: (3) that then as well the same person and persons so doing, as also all and every other person and persons which shall receive and take the same, to the intent to use or wear the same, being thereof lawfully convicted and attainted by the order of the common laws of this realm, shall incur the dangers, penalties, pains and forfeitures ordained and provided by the statute of *præmunire* and provision, made in the sixteenth year of the reign of king *Richard* the Second.

16 R. 2, c. 5.
Apprehend-
ing an offend-
er, or dis-
closing his
name.

Seet 8. " Provided nevertheless, and be it further enacted by the authority aforesaid, That if any person to whom any such *Agnus Dei*, or other the things aforesaid, shall be tendered and offered to be delivered, shall apprehend the party so offering the same, and bring him to the next justice of peace of that shire where such tender shall be made, if he shall be of power, and able so to do; or for lack of such ability, shall within the space of three days next after such offer made, as is aforesaid, disclose the name and names of such person or persons as so shall make the same offer, and the dwelling-place, or place of resort of the same person or persons

persons (which he shall endeavour himself to know by all the ways and means he can) to the ordinary of that diocese, or to any justice of peace of that shire where such person or persons to whom such offer shall be made, as is aforesaid, shall be resiant: (2) and also if such person or persons to whom such offer shall be made, shall happen to receive any such *Agnus Dei*, or other thing above-remembered, and shall within the space of one day next after such receipt, deliver the same to any justice of peace within the same shire where the party so receiving shall be then resiant, or shall happen to be: (3) that then every such person or persons doing any the acts or things in this provision above-mentioned, in form above declared, shall not by force of this statute incur any danger or penalty appointed by this statute, or any other pain or penalty; this act, or any thing therein contained to the contrary in any wise notwithstanding.

Sec. 9. " And be it further enacted by the authority aforesaid, That all and every person and persons which at any time since the beginning of the first year of the queen's majesty's reign that now is, have brought or caused to be brought into this realm any such bulls, writings, or instruments of reconciliation only as are above-mentioned, and now have any of the same bulls, writings or instruments in his or their hands or custody, and shall and do within the space of three months next after the end of any session, or dissolution of this present parliament, bring and deliver all such bulls, writings and instruments which they or any of them now have in his or their custody, to the bishop of the diocese where such absolution hath been given and received, to the intent that the same bulls, writings or instruments may be cancelled and defaced, and shall openly and publicly before such bishop, confess and acknowledge his or their offence therein, and humbly desire to be received, restored and admitted to the church of *England*, shall stand and be clearly pardoned and discharged of all and every offence and offences done or committed in any matter or cause concerning any of the said bulls, writings, or instruments, for or touching such absolution or reconciliation only. (2) And that all and every person or persons which have received or taken any absolution from the said bishop of *Rome*, or his said see of *Rome*, of any reconciliation unto the said bishop or to the said see of *Rome*, since the said first year of the reign of our said sovereign lady the queen, and shall within the said space of three months next after any session, or dissolution of this present parliament, come before the bishop of the diocese of such place where such absolution or reconciliation was had or made, and shall publicly and openly before the same bishop, confess and acknowledge his or their offence therein, and humbly desire to be received, restored, and admitted to the church of *England*, shall likewise stand and be clearly pardoned and discharged of all and every offence and offences done or committed in any matter or cause concerning the said bulls, writings or instruments, for or touching only receiving of such absolution or reconciliation, and for and concerning all absolution or reconciliation had or received by colour of any the said bulls, writings or instruments only.

Delivering an *Agnus Dei* received, to the ordinary, or a justice of peace.

A pardon to them that shall bring in to be cancelled those bulls which before they received.

A pardon of all those that have been reconciled to the bishop of *Rome*, and do confess it, and submit themselves.

The penalty of a justice of peace, not differing an offence declared unto him.

Stat. 10. " Provided also, and be it further enacted by the authority aforesaid, That if any justice of peace, to whom any matter or offence before-mentioned, shall be uttered, shewed or declared, as is aforesaid, do not within the space of fourteen days next after it shall be to him shewed or uttered, signify or declare the same to some one of the queen's majesty's privy council, that then the same justice of peace shall incur the danger, pain and forfeiture provided by the said statute made in the said sixteenth year of king *Richard* the Second.

Trial of a nobleman by his peers.

Stat. 11. " Provided also, and be it further enacted by the authority aforesaid, That if any nobleman, being a peer of this realm, shall at any time hereafter happen to be indicted for any the offence or offences aforesaid, that then every such nobleman and peer of this realm, shall have his trial by his peers, as in cases of high treason, and misprision of treason hath heretofore been accustomed or used :

A saving of the right of others.

Stat. 12. " Saving to all and every person and persons, bodies politick and corporate, their heirs and successors, and the heirs and successors of every of them, other than the said offenders and their heirs, claiming only as heir or heirs to any such offenders, and such person and persons as claim to any their uses, (2) all such rights, titles, interests, possessions, leases, rents, reversions, remainders, offices, fees, and all other profits, commodities and hereditaments, as they or any of them shall have at the day of the committing of such offence or offences, or any time before, in as large and ample manner to all intents and purposes, as if this act had never been had nor made ; any thing herein contained to the contrary thereof notwithstanding. 23 *Eliz. c. 1.*

Stat. 23 Eliz. c. 1, [A. D. 1581, intituled] " An act to retain the queen's majesty's subjects in their due obedience."

13 *Eliz. c. 2.*
3 *Instr. 178.*

" Where sithence the statute made in the thirteenth year of the reign of the queen our sovereign lady, intituled, *An act against the bringing in, and putting in execution of bulls, writings and instruments, and other superstitious things from the see of Rome*, divers evil-affected persons have practised, contrary to the meaning of the said statute, by other means than by bulls or instruments, written or printed, to withdraw divers the queen's majesty's subjects from their natural obedience to her majesty, to obey the said usurped authority of *Rome*, and in respect of the same, to persuade great numbers to withdraw their due obedience from her majesty's laws, established for the due service of Almighty God :

Treason to withdraw any from the religion established, to the Romish religion.

Stat. 2. " For reformation whereof, and to declare the true meaning of the said law, be it declared and enacted by the authority of this present parliament, That all persons whatsoever, which have or shall have, or shall pretend to have power, or shall by any ways or means put in practice to absolve, persuade or withdraw any of the queen's majesty's subjects, or any within her highness realms and dominions, from their natural obedience to her majesty : (2) or to withdraw them for that intent from the religion now by her highness authority established within her highness dominions,

1 *Leon. 239.*

dominions, to the Romish religion, (3) or to move them, or any of them, to promise any obedience to any pretended authority of the see of *Rome*, or of any other prince, state or potentate, to be had or used within her dominions, (4) or shall do any overt act to that intent or purpose; and every of them, shall be to all intents adjudged to be traytors, and being thereof lawfully convicted, shall have judgment, suffer and forfeit as in case of high treason. (5) And if any person shall, after the end of this session of parliament, by any means be willingly absolved or withdrawn, as aforesaid, or willingly be reconciled, or shall promise any obedience to any such pretended authority, prince, state or potentate, as is aforesaid, that then every such person, their procurers and counsellors thereunto, being thereof lawfully convicted, shall be taken, tried and judged, and shall suffer and forfeit, as in cases of high treason.

Sett 3. "And be it likewise enacted and declared, That all and every person and persons that shall wittingly be aiders or maintainers of such persons so offending, as is above expressed, or any of them, knowing the same, or which shall conceal any offence, as aforesaid, and shall not within twenty days at the furthest, after such persons knowledge of such offence, disclose the same to some justice of peace, or other high officer, shall be taken, tried and judged, and shall suffer and forfeit, as offenders in imprisonment of treason.

Sett 4. "And be it likewise enacted, That every person which shall say or sing mass, being thereof lawfully convicted, shall forfeit the sum of two hundred marks, and be committed to prison in the next gaol, there to remain by the space of one year, and from thenceforth till he have paid the said sum of two hundred marks: (2) and that every person which shall willingly hear mass, shall forfeit the sum of one hundred marks, and suffer imprisonment for a year.

Sett 5. "Be it also further enacted by the authority aforesaid, That every person above the age of sixteen years, which shall not repair to some church, chapel or usual place of common prayer, but forbear the same, contrary to the tenor of a statute made in the first year of her majesty's reign, for uniformity of common prayer, and being thereof lawfully convicted, shall forfeit to the queen's majesty, for every month, after the end of this session of parliament, which he or she shall so forbear, twenty pounds of lawful *English* money; (2) and that over and besides the said forfeitures, every person so forbearing, by the space of twelvemonths, as aforesaid, shall for his or her obstinacy, after certificate thereof in writing made into the court commonly called the king's bench, by the ordinary of the diocese, a justice of assize and gaol delivery, or a justice of peace of the county where such offender shall dwell or be, be bound with two sufficient sureties in the sum of two hundred pounds at least, to the good behaviour, (3) and so to continue bound, until such time as the persons so bound do conform themselves and come to the church, according to the true meaning of the said statute, made in the said first year of the queen's majesty's reign. 2 *Bulstr.* 324. 3 *Bulstr.* 87.

5. 1 *Anderf.* 138. *Hob.* 205. 11 *Co.* 56.

The forfeiture
for keeping of
a school mas-
ter not repair-
ing to the
church, or
not allowed
by the ordi-
nary.

Sett. 6. "And be it further enacted, That if any person or persons, body politick or corporate, after the feast of *Pentecost* next coming, shall keep or maintain any school-master which shall not repair to church, as is aforesaid, or be allowed by the bishop or ordinary of the diocese where such schoolmaster shall be so kept, shall forfeit and lose for every month so keeping him, ten pounds.

Sett. 7. " (Provided that no such ordinary, or their ministers, shall take any thing for the said allowance.) (2) And such school-master or teacher, presuming to teach contrary to this act, and being thereof lawfully convicted shall be disabled to be a teacher of youth, and shall suffer imprisonment without bail or mainprize for one year.

What justices
may enquire
of offences
done against
the stat. of
1 Eliz. c. 1.
5 Eliz. c. 1.
13 Eliz. c. 2.
Cro. Car. 10.

Sett. 8. "And be it likewise enacted, That all and every offences against this act, or against the acts of the first, fifth or thirteenth years of her majesty's reign, touching acknowledging of her majesty's supream government in causes ecclesiastical, or other matters touching the service of God, or coming to church, or establishment of true religion in this realm, shall and may be inquirable, as well before justices of peace, as other justices named in the same statutes, within one year and a day after every such offence committed; any thing in this act, or in any other act to the contrary notwithstanding.

29 Eliz. c. 6.

Sett. 9. "Be it likewise enacted, That the justices of *Oyer and Terminer*, and justices of assize, and of gaol delivery, in their several limits, shall have power to enquire, hear and determine of all offences against this statute: (2) and justices of peace in their open quarter-sessions of peace, shall have power by virtue of this act to enquire, hear and determine of all offences against this act (except treason and misprision of treason.)

A remedy for
a guilty per-
son conform-
ing himself.
Co. 569.
2 Roll. 108.
Raym. 465.

Sett. 10. "Provided alway, That every person guilty of an offence against this statute, other than treason and misprision of treason, which shall, before he be thereof indicted, or at his arraignment or trial before judgment, submit and conform himself before the bishop of the diocese where he shall be resident, or before the justices where he shall be indicted, arraigned or tried, (having not before made like submission at any his trial, being indicted for his first like offence) shall upon his recognition of such submission in open assizes or sessions of the county where such person shall be resident, be discharged of all and every the said offences against this act (except treason and misprision of treason) and of all pains and forfeitures for the same.

Who shall
have the mo-
ney forfeited
by this statute.

Sett. 11. "And be it likewise enacted, That all forfeitures of any sums of money limited by this act, shall be divided in three equal parts, whereof one third part shall be to the queen's majesty to her own use, one third part to the queen's majesty, for relief of the poor in the parish where the offence shall be committed, to be delivered by warrant to the principal officers in the receipt of the exchequer without further warrant from her majesty; and the other third part to such person as will sue for the same in any court of record, by action of debt, bill, plaint or information; in which suit, no essoin, protection, or wager of law shall be allowed: (2) and that every person which shall forfeit any sums of money by virtue of this act

He shall be
imprisoned
that is not

act, and shall not be able, or shall fail to pay the same within three months ^{able, or doth} after judgment thereof given, shall be committed to prison, there to ^{not pay the} remain until he have paid the said sums, or conform himself to go to church, ^{forfeiture.} and there do as is aforesaid.

Sett. 12. " Provided also, that every person which usually on the *Sun-* Service in a *day* shall have in his or her house divine service which is established by the *man's private* law of this realm, and be thereat himself or herself usually or most commonly present, and shall not obstinately refuse to come to church, and there to do as is aforesaid, and shall also four times in the year at the least be present at the divine service in the church of the parish where he or she shall be resident, or in some other common church, or such chapel of ease, shall not incur any pain or penalty limited by this act for not repairing to church.

Sett. 13. " And be it likewise enacted and declared, That every grant, ^{Fraudulent as-} conveyance, bond, judgment and execution, had or made since the be- ^{surances to de-} ginning of this session of parliament, or hereafter to be had or made, of ^{feat forfei-} covinous purpose to defraud any interest, right or title, that may or ought ^{tures.} to grow to the queen, or to any other person, by means of any conviction ^{2 Leon. 132.} or judgment by virtue of this statute, or of the said statute of the said ^{Moor 523.} thirteenth year, shall be, and be adjudged to be utterly void against the ^{Pl. 691.} queen, and against such as shall sue for any part of the said penalties, in form aforesaid.

Sett. 14. " Provided always, That if any peer of this realm shall happen ^{29 El. c. 6.} to be indicted of any offence made treason or misprision of treason by this ^{Trial of a peer} act, he shall have his trial by his peers, as in other like cases is ac- ^{by his peers,} customed.

Sett. 15. " Provided also, That neither this act, nor any thing therein ^{Ecclesiastical} contained, shall extend to take away or abridge the authority or jurisdiction ^{censures.} of the ecclesiastical censures for any cause or matter, but that the archbishops and bishops, and other ecclesiastical judges, may do and proceed, as before the making of this act they lawfully did or might have done; any thing in this act to the contrary notwithstanding."

STAT. 27ⁱ Eliz. c. 2, [*A. D.* 1585. *intituled*] " An act against jesuits, seminary priests, and other such-like disobedient persons."

" Whereas divers persons called or professed jesuits, seminary priests, ^{Jesuits and} and other priests, which have been, and from time to time are made in ^{priests in Eng-} the parts beyond the seas, by or according to the order and rites of the ^{land shall de-} Romish church, have of late come and been sent, and daily do come and ^{part, and none} are sent into this realm of *England*, and other the queen's majesty's domi- ^{shall come into} nions, (2) of purpose (as it hath appeared, as well by sundry of their own ^{this realm.} examinations and confessions, as divers other manifest means and proofs) ^{The penalty} not only to withdraw her highness subjects from their due obedience to ^{for relieving} her majesty, but also to stir up and move sedition, rebellion, and open ^{of them, &c.} hostility within the same her highness realms and dominions, (3) to the ^{The causes} great endangering of the safety of her most royal person, and to the utter ^{why jesuits} ruin, ^{and priests do}

come into this ruin, desolation and overthrow of the whole realm, if the same be not the realm. sooner by some good means foreseen and prevented :

All jesuits
and priests
shall depart
forth of the
realm.
Poph. 93.

Seſt. 2. “ For reformation whereof, be it ordained, established and enacted by the queen’s most excellent majesty, and the lords spiritual and temporal, and the commons in this present parliament assembled, and by the authority of the same parliament, That all and every jesuits, seminary priests, and other priests whatsoever made or ordained out of the realm of *England*, or other her highness dominions, or within any of her majesty’s realms or dominions, by any authority, power or jurisdiction derived, challenged or pretended from the see of *Rome*, since the feast of the nativity of St. *John Baptist*, in the first year of her highness reign, shall within forty days next after the end of this present session of parliament, depart out of this realm of *England*, and out of all other her highness realms and dominions, if the wind, weather and passage shall serve for the same, or else so soon after the end of the said forty days as the wind, weather and passage shall so serve.

No jesuits or
priests shall
come into, or
remain in this
realm.

Seſt. 3. “ And be it further enacted by the authority aforesaid, That it shall not be lawful to or for any jesuit, seminary priest, or other such priest, deacon, or religious or ecclesiastical person whatsoever, being born within this realm, or any other her highness dominions, and heretofore since the said feast of the nativity of St. *John Baptist*, in the first year of her majesty’s reign, made, ordained or professed, or hereafter to be made, ordained or professed, by any authority or jurisdiction derived, challenged or pretended from the see of *Rome*, by or of what name, title or degree soever the same shall be called or known, to come into, be or remain in any part of this realm, or any other her highness dominions, after the end of the same forty days, other than in such special cases, and upon such special occasions only, and for such time only, as is expressed in this act; and if he do, that then every such offence shall be taken and adjudged to be high treason; and every person so offending, shall for his offence be adjudged a traitor, and shall suffer, lose and forfeit as in case of high treason.

Receiving or
relieving a je-
suit or priest,
shall be fe-
lony.

Seſt. 4. “ And every person which after the end of the same forty days, and after such time of departure as is before limited and appointed, shall wittingly and willingly receive, relieve, comfort, aid or maintain any such jesuit, seminary priest, or other priest, deacon or religious or ecclesiastical person, as is aforesaid, being at liberty, or out of hold, knowing him to be a jesuit, seminary priest, or other such priest, deacon, or religious or ecclesiastical person, as is aforesaid, shall also for such offence be adjudged a felon, without benefit of clergy, and suffer death, lose and forfeit as in case of one attainted of felony.

They who be
in seminaries
shall after pro-
clamation re-
turn and take
the oath.

Seſt. 5. And be it further enacted by the authority aforesaid, If any of her majesty’s subjects (not being a jesuit, seminary priest, or other such priest, deacon, or religious or ecclesiastical person, as is before-mentioned) now being, or which hereafter shall be of, or brought up in any college of jesuits, or seminary already erected and ordained, or hereafter to be erected or ordained in the parts beyond the seas, or out of this realm in any fo-

reign

reign parts, shall not within six months next after proclamation in that behalf to be made in the city of *London*, under the great seal of *England*, return into this realm, and thereupon within two days next after such return, before the bishop of the diocese, or two justices of peace of the county where he shall arrive, submit himself to her majesty and her laws, and take the oath set forth by act in the first year of her reign; that then every such person which shall otherwise return, come into, or be in this realm, or any other her highness dominions, for such offence of returning or being in this realm, or any other her highness dominions, without submission, as aforesaid, shall also be adjudged a traitor, and suffer, lose and forfeit as in case of high treason.

Señ. 6. “ And be it further enacted by the authority aforesaid, If any person under her majesty’s subjection or obedience, shall at any time after the end of the said forty days, by way of exchange, or by any other shift, way or means whatsoever, wittingly and willingly, either directly or indirectly, convey, deliver or send, or cause or procure to be conveyed or delivered, to be sent over the seas, or out of this realm, or out of any other her majesty’s dominions or territories, into any foreign parts, (2) or shall otherwise wittingly or willingly yield, give or contribute any money or other relief, to or for any jesuit, seminary priest, or such other priest, deacon, or religious or ecclesiastical person, as is aforesaid; (3) or to or for the maintenance or relief of any college of jesuits, or seminary already erected or ordained, or hereafter to be erected or ordained in any the parts beyond the seas, or out of this realm in any foreign parts; (or of any person then being of or in the same colleges or seminaries, and not returned into this realm with submission,) as in this act is expressed, and continuing in the same realm; (5) That then every such person so offending, for the same offence shall incur the danger and penalty of *præmunire*, mentioned in the statute of *præmunire*, made in the sixteenth year of the reign of 16 R. 2, c. 5. king *Richard* the Second.

Señ. 7. “ And be it further enacted by the authority aforesaid, That it shall not be lawful for any person of, or under her highness obedience, at any time after the said forty days, during her majesty’s life (which God long preserve) to send his or her child, or other person, being under his or her government, into any the parts beyond the seas out of her highness obedience, without the special licence of her majesty, or of four of her highness privy-council, under their hands in that behalf first had or obtained (except merchants, for such only as they or any of them shall send over the seas, only for or about his, her or their trade of merchandize, or to serve as mariners, and not otherwise) upon pain to forfeit and lose for every such their offence, the sum of one hundred pounds.

Señ. 8. “ And be it also enacted by the authority aforesaid, That every offence to be committed or done against the tenor of this act, shall and may be enquired of, heard and determined as well in the court commonly called the king’s bench, in the county where the same court shall for the time be, as also in any other county within this realm, or any other her

Sending relief to any jesuit, priest or other person abiding in a seminary.

None shall send his child or other beyond the seas, without licence. Exp. 3 Jac. 1, c. 5.

Where the offences committed against this act shall be enquired of and determined.

highness dominions where the offence is or shall be committed, or where the offender shall be apprehended and taken.

Transporting
of jesuits,
priests, &c.

Secl. 9. " Provided also, and be it enacted by the authority aforesaid, That it shall and may be lawful for and to every owner and master of any ship, bark or boat, at any time within the said forty days, or other time before limited for their departure, to transport into any the parts beyond the seas, any such jesuit, seminary priest, or other such priest aforesaid, so as the same jesuit, seminary priest, or other priest aforesaid so to be transported, do deliver unto the mayor, or other chief officer of the town, port or place where he shall be taken in to be transported, his name, and in what place he received such order, and how long he hath remained in this realm, or in any other her highness dominions, being under her obedience.

A jesuit or
priest submit-
ting himself,
and taking the
oath, and o-
beying the
laws.

Secl. 10. " Provided also, That this act, or any thing therein contained shall not in any wise extend to any such jesuit, seminary priest, or other such priest, deacon, or religious or ecclesiastical person, as is before-mentioned, as shall at any time within the said forty days, or within three days after that he shall hereafter come into this realm, or any other her highness dominions, submit himself to some archbishop or bishop of this realm, or to some justice of peace within the county where he shall arrive or land, and do thereupon truly and sincerely, before the same archbishop, bishop, or such justice of peace, take the said oath set forth in *anno primo*, and by writing under his hand confess and acknowledge, and from thenceforth continue his due obedience unto her highness laws, statutes and ordinances made and provided, or to be made or provided in causes of religion.

1 El. c. 1.

Secl. 11. " Provided always, if it happen at any time hereafter, any peer of this realm to be indicted of any offence made treason, felony or *præmunire* by this act, that he shall have his trial by his peers, as in other cases of treason, felony or *præmunire* is accustomed,

Secl. 12. " Provided nevertheless, and it is declared by authority aforesaid, That if any such jesuit, seminary priest, or other priest aforesaid, shall fortune to be so weak or infirm of body, that he or they may not pass out of this realm by the time herein limited without imminent danger of life, and this understood as well by the corporal oath of the party, as by other good means, unto the bishop of the diocese, and two justices of peace of the same county where such person or persons do dwell or abide, That then, and upon good and sufficient bond of the person or persons, with sureties, of the sum of two hundred pounds at the least, with condition that he or they shall be of good behaviour towards our sovereign lady the queen, and all her liege people, then he or they so licensed, and doing, as is aforesaid, shall and may remain and be still within this realm, without any loss or danger to fall on him or them by this act, for so long time as by the same bishop and justices shall be limited and appointed, so as the same time of abode exceed not the space of six months at the most: (2) and that no person or persons shall sustain any loss, or incur any danger by this act, for the receiving or maintaining of any such person or persons so licensed, as is aforesaid, for and during such time only as such person

or persons shall be so licensed to tarry within this realm; any thing contained in this act to the contrary notwithstanding.

Stat. 13. " And be it also further enacted by authority aforesaid, That every person or persons being subjects of this realm, which after the said forty days shall know and understand that any such jesuit, seminary priest, or other priest aforesaid, shall abide, stay, tarry or be within this realm, or other the queen's dominions and countries, contrary to the true meaning of this act, and shall not discover the same unto some justices of peace, or other higher officer within twelve days next after his said knowledge, but willingly conceal his knowledge therein, That every such offender shall make fine, and be imprisoned at the queen's pleasure; (2) And that if such justice of peace, or other such officer to whom such matter shall be so discovered, do not within eight and twenty days then next following, give information thereof to some of the queen's privy council, or to the president of the queen's council established in the North, or in the marches of *Wales*, for the time being, That then he or they so offending, shall for every such offence forfeit the sum of two hundred marks.

One knowing a jesuit or priest to remain in the realm, and not discovering it to a justice of peace.

Skinner 369.

Stat. 14. " And be it likewise enacted by the authority aforesaid, That such of the privy council, president or vice-president, to whom such information shall be made, shall thereupon deliver a note in writing, subscribed with his own hand, to the party by whom he shall receive such information, testifying that such information was made unto him.

Stat. 15. " And be it also enacted, That all such oaths, bonds and submissions as shall be made by force of this act, as aforesaid, shall be certified into the chancery by such parties before whom the same shall be made, within three months after such submission; (2) upon pain to forfeit and lose for every such offence, one hundred pounds of lawful *English* money; the said forfeiture to be to the queen, her heirs and successors:

All oaths, bonds and submissions certified into the chancery.

Stat. 16. " And that if any person so submitting himself, as aforesaid, do at any time within the space of ten years after such submission made, come within ten miles of such place where her majesty shall be, without especial licence from her majesty in that behalf to be obtained in writing under her hand, That then, and from thenceforth, such person shall take no benefit of his said submission, but that the same submission shall be void, as if the same had never been." 1 *Jac.* 1, c. 4. 3 *Jac.* 1, c. 5.

None submitting himself, shall come within ten miles of the queen.

Stat. 29 Eliz. c. 6. [*A D.* 1587, intituled] " An act for the more speedy and due execution of certain branches of the statute made in the twenty-third year of the queen's majesty's reign, intituled, *An act to retain the queen's majesty's subjects in their due obedience.*"

" For avoiding of all frauds and delays heretofore practised, or hereafter to be put in ure, to the hindrance of the due and speedy execution of the statute made in the session of parliament holden by prorogation at *Westminster*, the sixteenth day of *January*, in the three and twentieth year of the reign of our most gracious sovereign lady the queen's majesty, intituled, *An act to retain the queen's majesty's subjects in their due obedience.*

Certain assurances of lands made by recusants, shall be void to the queen. In what courts

they shall be convicted. (2) Be it enacted by the authority of this present parliament, That every feoffment, gift, grant, conveyance, alienation, estate, lease, incumbrance and limitation of use, of or out of any lands, tenements or hereditaments whatsoever, had or made at any time since the beginning of the queen's majesty's reign, or at any time hereafter to be had or made by any person which hath not repaired, or shall not repair to some church, chapel or usual place of common prayer, but hath forborn, or shall forbear the same, contrary to the tenor of the said statute; (3) and which is or shall be revokable at the pleasure of such offender, (4) or in anywise directly or indirectly meant or intended, to or for the behoof, relief or maintenance, or at the disposition of any such offender, (5) or wherewith, or whereby, or in consideration whereof, such offender or his family shall be maintained, relieved or kept, (6) shall be deemed and taken to be utterly frustrate and void, as against the queen's majesty, for or concerning the levying and paying of such sums of money as any such person by the laws or statutes of the realm already made, ought to pay or forfeit for not coming or repairing to any church, chapel, or usual place of common prayer, or for saying, hearing, or being at any mass; (7) and shall also be seized and had to and for her majesty's use and behoof, as hereafter in this act is mentioned, any pretence, colour, feigned consideration, or expressing of any use to the contrary notwithstanding.

Conviction of recusancy shall be certified into the exchequer. 2 Roll. 108. *Sec. 2.* " And further be it enacted by the authority aforesaid, That every conviction heretofore recorded for any offence before mentioned, not already estreated or certified into the queen's majesty's court of exchequer, shall from the justices before whom the record of such conviction shall be remaining, be estreated and certified into the queen's majesty's court of exchequer, before the end of *Easter* term next coming, in such convenient certainty for the time and other circumstances, as the court of exchequer may thereupon award out process, for seizure of the lands and goods of every such offender as hath not paid their said forfeitures, according to the laws and statutes in such case provided; (2) And that every conviction hereafter for any offence before mentioned, shall be in the court commonly called the king's bench, or at the assizes, or general gaol delivery, and not elsewhere, and shall from the justices before whom the record of such conviction shall remain, be estreated and certified into the said court of exchequer, before the end of the term next ensuing after every such conviction, in such convenient certainty, as is aforementioned.

In what courts convictions of recusancy shall be.

At what time the money forfeited for not going to the church, shall be paid. The king may seize two parts of the offender's lands, &c. in lieu of the *Sec. 3.* " And be it also enacted by the authority aforesaid, That every such offender in not repairing to divine service, but forbearing the same contrary to the said statute, as hath been heretofore convicted for such offence, and hath not made submission, and been conformable according to the true meaning of the said statute, shall without any other indictment, or conviction, pay into the receipt of the said exchequer, all such sums of money as according to the rate of twenty pounds for every month sithence the same conviction, do yet remain unpaid, in form as hereafter ensueth; that is to say, The one moiety thereof before the end of the next *Trinity* term, and the other moiety thereof before the end of the next

Popery.

673

Hillary term, or at any such other times, as by the lord treasurer, chancellor, and chief baron of the exchequer, or any two of them, shall by composition upon good bond and surety taken, be limited, before the end of the said next *Trinity* term, if any such composition shall happen to be ; (2) And shall also in every *Easter* and *Michaelmas* term, until such time as the same person do make submission, and be conformable, according to the true meaning of the said statute, pay into the said receipt of the exchequer, twenty pounds for every month, which shall incur in all that mean time.

Stat. 4. “ And be it also enacted by the authority aforesaid, That every such offender, in not repairing to divine service, but forbearing the same contrary to the said statute, as hereafter shall fortune to be thereof once convicted, shall in such of *Easter* or *Michaelmas*, as shall be next after such conviction, pay into the said receipt of the exchequer after the rate of twenty pounds for every month, which shall be contained in the indictment whereupon such conviction shall be ; (2) and shall also for every month after such conviction, without any other indictment or conviction, pay into the receipt of the exchequer aforesaid, at two times in the year ; that is to say, in every *Easter* term, and *Michaelmas* term, as much as then shall remain unpaid, after the rate of twenty pounds for every month after such conviction ; (3) And if default shall be made in any part of any payment aforesaid, contrary to the form herein before limited, That then and so often the queen’s majesty shall and may, by process out of the said exchequer, take, seize, and enjoy all the goods, and two parts as well of all the lands, tenements and hereditaments, *leases and farms of such offenders, as of all other the lands, tenements and hereditaments* liable to such seizures or to the penalties aforesaid, by the true meaning of this act, leaving the third part only of the same lands, tenements and hereditaments, *leases and farms*, to and for the maintenance and relief of the same offender, his wife, children and family.

Stat. 5. “ And for the more speedy conviction of such offender, in not repairing to divine service, but forbearing the same contrary to the said statute ; (2) Be it enacted by the authority aforesaid, That the indictment of every such offender, mentioning the not coming of such offender to the church of the parish where such person at any time before such indictment, was, or did keep house or residence, nor to any other church, chapel, or usual place of common prayer, shall be sufficient in the law ; (3) and that it shall not be needful to mention in any such indictment, that the party offender was or is inhabiting within this realm of *England*, or any other the queen’s majesty’s dominions : (4) But if it shall happen any such offender then not to be within this realm, or other her majesty’s dominions, that in such case the party shall be relieved by plea to be put in, in that behalf, and not otherwise : (5) And that upon the indictment of such offender, a proclamation shall be made at the same assizes or gaol-delivery in which the indictment shall be taken, (if the same be taken at any assize or gaol-delivery) by which it shall be commanded, that the body of such offender shall be rendred to the sheriff of the same county, before the

twenty pounds.
3 Ja. 1. c. 4.
f. 11.

11 Cok. 57-

The queen may take all the offender’s goods, and two parts of his lands and leases, who payeth not twenty pounds a month.

1 Roll. 94.

2 Roll. 25.

12 Co. 2.

Enforced by

1 J. 1. c. 4.

f. 5.

The indictment sufficient, though it be not mentioned, that the party is within the realm.
Godbolt 148. pl. 191.
A proclamation, that the party indicted

shall yield his body to the sheriff.

Palmer 39.
1 Lutw. 201,
208.

the said next assizes, or general gaol-delivery to be holden in the same county: (6) And if at the said next assizes or gaol-delivery, the same offender so proclaimed, shall not make appearance of record, that upon such default recorded, the same shall be as sufficient a conviction in law of the said offence whereof the party so standeth indicted, as is aforesaid, as if upon the same indictment, a trial by verdict thereupon had proceeded and been recorded.

The offender submitting, or dying, no forfeiture shall ensue.
Savill 130.

Sett. 6. " Provided always, That whensoever any such offender, as is aforesaid, shall make submission, and become conformable, according to the form limited by the same estatute, made in the three and twentieth year of the queen's majesty's reign, or shall fortune to die; That then no forfeiture of twenty pounds for any month, or seizure of the lands of the same offender, from and after such submission and conformity or death, and full satisfaction of all the arrearages of twenty pounds monthly, before such seizure due or payable, shall ensue, or be continued against such offender, so long as the same person shall continue in coming to divine service, according to the intent of the said estatute.

The third part of the forfeiture assigned to the poor.
35 Eliz. c. 1.

Sett. 7. " And where by the said former estatute, the third part of the forfeitures for not coming to divine service, is limited to the poor; (2) Be it further enacted by the authority aforesaid, That it shall and may be lawful to and for the lord treasurer of *England*, chancellor, and chief baron of the exchequer for the time being, or two of them, to assign and dispose of the full third part of the twenty pounds for every month paid or to be paid into the receipt of the exchequer, as is aforesaid, for the relief and maintenance as well of the poor, and of the houses of correction, as of impotent and maimed soldiers, as the same lord treasurer, chancellor, and chief baron, or any two of them, shall order or appoint; any thing in the said estatute made, in the said three and twentieth year of her majesty's reign mentioned, to the contrary thereof in any wise notwithstanding.

Assurances made *bona fide*, not impeached.

Sett. 8. " Provided always, That this act or any thing therein contained, shall not in anywise extend or be construed to make void or impeach any grant or lease heretofore made *bona fide*, without fraud or covin, whereupon any yearly rent or payment is reserved, or payable; (2) or any grant or lease hereafter to be made *bona fide*, without fraud or covin, whereupon the accustomed yearly rent or more shall be reserved; (3) or any other conveyance, assurance, or assignment whatsoever heretofore made *bona fide*, upon good consideration, and without fraud or covin, which is not or shall not be revokable at the pleasure of such offender; (4) otherwise than to give benefit and title to her majesty, her heirs and successors, to have, perceive, and enjoy such rents and payments during the continuance of such lease and grant, according to the true meaning of this act.

Seizure of lands whereof the offender hath but an estate for life.

Sett. 9. " And provided also, That this act or any thing therein contained, shall not in any wise extend or be construed to continue any seizure of any lands or tenements of such offender in her majesty's hands, or in the hands of her heirs or successors, after the said offender's death, which lands or tenements he shall have or be seized of only for term of his life,

life, or in the right of his wife; any thing in this act to the contrary in any wise notwithstanding." 5 *El. c. 1.* 23 *El. c. 1.*

STAT. 35 *Eliz. c. 2.* [*A. D. 1593, intituled*] " An act for restraining popish recusants to some certain places of abode."

" For the better discovering and avoiding of such traiterous and most dangerous conspiracies and attempts, as are daily devised and practised against our most gracious sovereign lady the queen's majesty, and the happy estate of this commonweal, by sundry wicked and seditious persons, who terming themselves catholicks, and being (indeed) spies and intelligencers not only for her majesty's foreign enemies, but also for rebellious and traiterous subjects born within her highness realms and dominions, and hiding their most detestable and devilish purposes under a false pretext of religion and conscience, do secretly wander and shift from place to place within this realm, to corrupt and seduce her majesty's subjects, and to stir them to sedition and rebellion :

Penalty of a convicted popish recusant removing above five miles from his house. Where a recusant having no house shall make his abode. 3 Bulstr. 87. Carthew 291.

SECT. 2. " Be it ordained and enacted by our sovereign lady the queen's majesty, and the lords spiritual and temporal, and the commons in this present parliament assembled, and by the authority of the same, That every person above the age of sixteen years, born within any of the queen's majesty's realms and dominions, or made denizen, being a popish recusant, and before the end of this session of parliament convicted for not repairing to some church, chapel, or usual place of common prayer, to hear divine service there, but forbearing the same, contrary to the tenor of the laws and statutes heretofore made and provided in that behalf, and having any certain place of dwelling and abode within this realm, shall within forty days next after the end of this session of parliament (if they be within this realm, and not restrained or stayed either by imprisonment, or by her majesty's commandment, or by order and direction of some six, or more, of the privy council, or by such sickness and infirmity of body, as they shall not be able to travel without imminent danger of life, and in such cases of absence out of the realm, restraint or stay, then within twenty days next after they shall return into the realm, and be enlarged of such imprisonment or restraint, and shall be able to travel) repair to their place of dwelling where they usually heretofore made their common abode, and shall not at any time after pass or remove above five miles from thence.

SECT. 3. " And also that every person being above the age of sixteen years, born within any her majesty's realms or dominions, or made denizen, and having, or which hereafter shall have any certain place of dwelling and abode within this realm, which being then a popish recusant, shall at any time hereafter be lawfully convicted for not repairing to some church, chapel, or usual place of common prayer to hear divine service there, but for hearing the same contrary to the said laws and statutes, and being within this realm at the time that they shall be convicted, shall within forty days next after the same conviction (if they be not restrained or stayed

- by.

by imprisonment, or otherwise, as is aforesaid, and in such cases of restraint and stay, then within twenty days next after they shall be enlarged of such imprisonment or restraint, and shall be able to travel) repair to their place of usual dwelling and abode, and shall not at any time after

The penalty of an offender. pass or remove above five miles from thence; (2) upon pain that every person and persons that shall offend against the tenor and intent of this act in any thing before-mentioned, shall lose and forfeit all his and their goods and chattels, and shall also lose and forfeit to the queen's majesty all the lands, tenements and hereditaments, and all the rents and annuities of every such person so doing or offending, during the life of the same offender.

What a recusant shall do that hath no place of abode. *Sec. 4.* " And be it also enacted by the authority aforesaid, That every person above the age of sixteen years, born within any of her majesty's realms or dominions, not having any certain place of dwelling and abode within this realm, and being a popish recusant, not usually repairing to some church, chapel, or usual place of common prayer, but forbearing the same contrary to the same laws and statutes in that behalf made, shall within forty days next after the end of this session of parliament (if they be then within this realm, and not imprisoned, restrained, or stayed, as aforesaid, and in such case of absence out of the realm, imprisonment, restraint, or stay, then within twenty days next after they shall return into the realm, and be enlarged of such imprisonment or restraint, and shall be able to travel) repair to the place where such person was born, or where the father or mother of such person shall then be dwelling, and shall not at any time after remove or pass above five miles from thence; (2) upon pain that every person and persons which shall offend against the tenor and intent of this act in any thing before-mentioned, shall lose and forfeit all his and their goods and chattels, and shall also forfeit to the queen's majesty, all the lands, tenements and hereditaments, and all the rents and annuities of every such person so offending, during the life of the same person.

The forfeiture of a recusant removing above five miles from his place of abode. *Sec. 5.* " And be it further enacted by the authority aforesaid, That every such offender as is before-mentioned, which hath or shall have any lands, tenements or hereditaments, by copy of court-roll, or by any other customary tenure at the will of the lord, according to the custom of any manor, shall forfeit all and singular his and their said lands, tenements and hereditaments so holden by copy of court-roll, or customary tenure, as aforesaid, for and during the life of such offender (if his or her estate so long continue) to the lord or lords of whom the same be immediately holden, (if the same lord or lords be not then a popish recusant, and convicted for not coming to church to hear divine service, but forbearing the same contrary to the laws and statutes aforesaid, nor seized or possessed upon trust, to the use or behoof of any such recusant, as aforesaid) and in such case the same forfeiture to be to the queen's majesty.

Recusants shall notify their living, and deliver their names to the curate. *Sec. 6.* " Provided always, and be it further enacted by the authority aforesaid, That all such persons as by the intent and true meaning of this act, are to make their repair to their place of dwelling and abode, or to the place where they were born, or where their father or mother shall be dwelling,

dwelling, and not to remove or pass above five miles from thence, as is aforesaid, shall within twenty days next after their coming to any of the said places (as the case shall happen) notify their coming thither, and present themselves, and deliver their true names in writing to the minister or curate of the same parish, and to the constable, headborough or tithingman of the town, and thereupon the said minister or curate shall presently enter the same into a book to be kept in every parish for that purpose.

Sec. 7. “ And after the said minister or curate, and the said constable, headborough or tithingman, shall certify the same in writing to the justices of the peace of the same county at the next general or quarter-sessions to be holden in the same county, and the said justices shall cause the same to be entered by the clerk of the peace in the rolls of the same sessions. Recusants names certified to the justices.

Sec. 8. “ And to the end that the realm be not pestered and overcharged with the multitude of such seditious and dangerous people, as is aforesaid, who having little or no ability to answer or satisfy any competent penalty for their contempt and disobedience of the said laws and statutes, and being committed to prison for the same, do live for the most part in better case there, than they could if they were abroad at their own liberty; (2) the lords spiritual and temporal, and the commons in this present parliament assembled, do most humbly and instantly beseech the queen’s majesty, That it may be further enacted, That if any such person or persons, being a popish recusant (not being a *feme covert*, and not having lands, tenements, rents or annuities, of an absolute estate of inheritance or freehold, of the clear yearly value of twenty marks, above all charges, to their own use and behoof, and not upon any secret trust or confidence for any other, or goods and chattels in their own right, and to their own proper use and behoof; and not upon any such secret trust and confidence for any other, above the value of forty pounds) shall not within the time before in this act in that behalf limited and appointed, repair to their place of usual dwelling and abode, if they have any, or else to the place where they were born, or where their father or mother shall be dwelling, according to the tenor and intent of this present act; and thereupon notify their coming, and present themselves, and deliver their true names in writing to the minister or curate of the parish, and to the constable, headborough or tithingman of the town, within such time, and in such manner and form as is aforesaid, or at any time after such their repairing to any such place, as is before appointed, shall pass or remove above five miles from the same; (3) and shall not within three months next after such person shall be apprehended or taken for offending, as is aforesaid, conform themselves to the obedience of the laws and statutes of this realm, in coming usually to the church to hear divine service, and in making such publick confession and submission, as hereafter in this act is appointed and expressed, being thereunto required by the bishop of the diocese, or any justice of the peace of the county where the same person shall happen to be, or by the minister or curate of the parish: (4) that in every such case every such offender, being thereunto warned or required by any two justices of the The penalty of a recusant of small ability, not repairing to the place appointed, or departing thence.

Recusants abjuring and departing the peace, realm.

peace, or coroner of the same county where such offenders shall then be, shall upon his or their corporal oath before any two justices of the peace, or coroner of the same county, abjure this realm of *England*, and all other the queen's majesty's dominions for ever; (5) and thereupon shall depart out of this realm at such haven and port, and within such time as shall in that behalf be assigned and appointed by the said justices of peace or coroner before whom such abjuration shall be made, unless the same offenders be letted or stayed by such lawful and reasonable means or causes, as by the common laws of this realm are permitted and allowed in cases of abjuration for felony; and in such cases of let or stay, then within such reasonable and convenient time after, as the common law requireth in case of abjuration for felony, as is aforesaid.

Entering abjuration of record, and certifying the same.

Sec. 9. "And that every justice of peace or coroner before whom any such abjuration shall happen to be made, as is aforesaid, shall cause the same presently to be entered of record before them, and shall certify the same to the justices of assizes or gaol-delivery of the said county, at the next assizes or gaol-delivery to be holden in the same county.

It shall be felony for a recusant not to abjure, not going, or returning without licence.

Sec. 10. "And if any such offender, which by the tenor and intent of this act is to be abjured, as is aforesaid, shall refuse to make such abjuration as is aforesaid, or after such abjuration made, shall not go to such haven, and within such time as is before appointed, and from thence depart out of this realm, according to this present act, or after such his departure, shall return or come again into any her majesty's realms or dominions, without her majesty's special licence in that behalf first had and obtained; that then in every such case the person so offending shall be adjudged a felon, and shall suffer and lose as in case of felony without benefit of clergy.

A jesuit or priest refusing to answer, shall be imprisoned.

1 Salk. 351.

Sec. 11. "And be it further enacted and ordained by the authority aforesaid, That if any person which shall be suspected to be a jesuit, seminary, or massing priest, being examined by any person having lawful authority in that behalf to examine such person as shall be so suspected, shall refuse to answer directly and truly whether he be a jesuit, or a seminary, or massing priest, as is aforesaid, every such person so refusing to answer, shall for his disobedience and contempt in that behalf, be committed to prison by such as shall examine him, as is aforesaid, and thereupon shall remain and continue in prison without bail or mainprize, until he shall make direct and true answer to the said questions whereupon he shall be so examined.

Licence to travel above five miles, repealed by 3 Jac. 1, c. 5, sect. 6.

Sec. 12. "Provided nevertheless, and be it further enacted by the authority aforesaid, That if any of the persons which are hereby limited and appointed to continue and abide within five miles of their usual dwelling-place, or of such place where they were born, or where their father or mother shall be dwelling, as is aforesaid, shall have necessary occasion or business to go and travel out of the compass of the said five miles, That then, and in every such case, upon licence in that behalf to be gotten under the hands of two of the justices of the peace of the same county, with the privity and assent in writing of the bishop of the diocese, or of the lieutenant,

nant, or of any deputy lieutenant of the same county, under their hands, it shall and may be lawful for every such person to go and travel about such their necessary business, and for such time only for their travelling, attending and returning, as shall be comprized in the same licence; any thing before in this act to the contrary notwithstanding.

Seet. 13. " Provided also, That if any such person so restrained, as is aforesaid, shall be urged by process, without fraud or covin, or be bounden without fraud or covin, to make appearance in any of her majesty's courts, or shall be sent for, commanded or required by any three or more of her majesty's privy council, or by any four or more of any commissioners to be in that behalf nominated and assigned by her majesty, to make appearance before her majesty's said council or commissioners; That in every such case, every such person so bounden, urged, commanded or required to make such appearance, shall not incur any pain, forfeiture or loss, for travelling to make appearance accordingly, nor for his abode concerning the same, nor for convenient time for his return back again upon the same.

Persons urged by process or commandment.

Seet. 14. " And be it further provided and enacted by the authority aforesaid, That if any such person or persons so restrained, as is aforesaid, shall be bound, or ought to yield and render their bodies to the sheriff of the county where they shall happen to be, upon proclamation in that behalf without fraud or covin to be made; That then in every such case, every person which shall be so bounden, or ought to yield and render their body, as aforesaid, shall not incur any pain, forfeiture or loss for travelling for that intent and purpose only, without any fraud or covin, nor for convenient time taken for their return back again upon the same.

Persons which are to yield their bodies to the sheriff.

Seet. 15. " And furthermore be it enacted by the authority of this present parliament, That if any person or persons that shall at any time hereafter offend against this act, shall before he or they shall be thereof convicted, come to some parish church on some *Sunday* or other festival day, and then and there hear divine service, and at service-time, before the sermon, or reading of the gospel, make public and open submission and declaration of his and their conformity to her majesty's laws and statutes, as hereafter in this act is declared and appointed; That then the same offender shall thereupon be clearly discharged of, and from all and every pains and forfeitures inflicted or imposed by this act, or any of the said offences in this act contained: (2) the same submission to be made as hereafter followeth: that is to say,

An offender upon open submission shall be discharged.

Seet. 16. " I *A. B.* do humbly confess and acknowledge, That I have grievously offended God in contemning her majesty's godly and lawful government and authority, by absenting myself from church, and from hearing divine service, contrary to the godly laws and statutes of this realm: (2) and I am heartily sorry for the same, and do acknowledge and testify in my conscience, That the bishop or see of *Rome* hath not, nor ought to have any power or authority over her majesty, or within any her majesty's realms or dominions: (3) and I do promise and protest, without any dissimulation, or any colour or means of any dispensation, That from henceforth I will from time to time obey and perform her majesty's laws and

The form of the submission.

statutes, in repairing to the church, and hearing divine service, and do my uttermost endeavour to maintain and defend the same.

The minister
shall enter the
submission.

Seſſ. 17. “ And that every minister or curate of every parish, where such submission and declaration of conformity shall hereafter be so made by any such offender, as aforesaid, shall presently enter the same into a book to be kept in every parish for that purpose, and within ten days then next following shall certify the same in writing to the bishop of the same diocese.

A recusant
submitting,
falleth into a
relapse.
1 Bullr. 133.

Seſſ. 18. “ Provided nevertheless, That if any such offender, after such submission made as is aforesaid, shall afterward fall into relapse, or estoons become a recusant, in not repairing to church, to hear divine service, but shall forbear the same, contrary to the laws and statutes in that behalf made and provided: That then every such offender shall lose all such benefit as he or she might otherwise by virtue of this act have or enjoy by reason of their said submission; and shall thereupon stand and remain in such plight, condition and degree, to all intents, as though such submission had never been made.

Women
bound, saving
for abjuration.
Bridgman
120.

Seſſ. 19. “ Provided always, and be it enacted by the authority aforesaid, That all and every woman married, or hereafter to be married, shall be bound by all and every article, branch and matter contained in this statute, other than the branch and article of abjuration before-mentioned: (2) and that no such woman married, or to be married, during marriage, shall be in any wise forced or compelled to abjure, or be abjured by this act; any thing therein contained to the contrary thereof notwithstanding.
23 *Eliz. c. 1.* 29 *Eliz. c. 6.* 1 *Jac. 1, c. 4.* 3 *Jac. 1, c. 4, 5.*

STAT. 1 *Jac. 1, c. 4.* [*A. D. 1603, intituled*] “ An act for the due execution of the statutes against jesuits, seminary priests, recusants.”

Statutes made
in the reign of
Q. Elizabeth,
shall be put in
execution.

In what case a
recusant's heir
shall be charg-
ed, in what
not.

Going into se-
minaries.

3 Bullr. 178.

1 *El. c. 1.*

5 *El. c. 1.*

13 *El. c. 2.*

23 *El. c. 1.*

27 *El. c. 2.*

29 *El. c. 6.*

35 *El. c. 1, 2*

2 Bullr. 324

A recusant
conforming
himself, shall

“ For the better and more due execution of the statutes heretofore made, as well against jesuits, seminary priests, and other such like priests, as also against all manner of recusants; (2) be it ordained and enacted by authority of this present parliament, That all and every the statutes heretofore made in the reign of the late queen of famous memory, *Elizabeth*, as well against jesuits, seminary priests, and other priests, deacons, religious and ecclesiastical persons whatsoever, made, ordained or professed, or to be made, ordained or professed, by any authority or jurisdiction derived, challenged or pretended from the see of *Rome*, as those which do in any wise concern the withdrawing of the king's subjects from their due obedience, and the religion now professed, and the taking of the oath of obedience unto the king's majesty, his heirs and successors, together with all those made in the said late queen's time, against any manner of recusants, shall be put in due and exact execution.

Seſſ. 2. “ Provided nevertheless, and be it enacted by the authority of this present parliament, That if any that is or shall be a recusant, shall submit or reform him or herself, and become obedient to the laws and ordinances of the church of *England*, and repair to the church, and continue there during the time of the divine service and sermons, according

to

to the true meaning of the statutes in that behalf, in the said late queen's be discharged. time made and provided, That then every such person for and during such Raym. 405, time as he or she shall so continue in such conformity and obedience, shall 406. from thenceforth be freed and discharged of and from any the penalties and losses which the same person might otherwise sustain and bear, in respect or by reason of such persons recusancy.

Sect. 3. " And if any recusant shall hereafter die, his heir being no recusant, That in every such case, every such heir shall be freed and discharged of all and singular the penalties, charges and incumbrances happening upon him or her, in respect or by reason of his or her ancestor's recusancy: (2) and if at the decease of any such recusant, his heir shall happen to be a recusant, and after shall become conformable and obedient to the laws and ordinances of the church of *England*, and repair to the church, and continue there during the time of the divine service and sermons, according to the intent and true meaning of the said statutes and ordinances in that behalf made, as is aforesaid, and also shall take the oath of supremacy in such sort as that oath is expressed in one act of parliament made in the first year of the reign of our late sovereign lady queen *Elizabeth*, before the archbishop or bishop of the diocese, That in every such I El. c. 1. case, every such heir shall be freed and discharged of all and singular the penalties, charges and incumbrances happening unto him or her in respect or by reason of any of his or her ancestor's recusancy.

Sect. 4. " Provided always, and be it enacted by the authority of this A recusant's present parliament, That if the heir of any recusants shall happen to be heir within within the age of sixteen years at the time of the decease of his or her age at the ancestor, and shall after his or her said age of sixteen years, become or be time of his: a recusant, that in every such case, any such heir shall not be freed or dis- ancestor's death. charged of all or any of the penalties, charges and incumbrances happening upon him or her, in respect or by reason of any of his or her ancestor's recusancy, until he or she shall submit or reform him or herself, and become obedient to the laws and ordinances of the church of *England*, and repair to the church, and continue there during the time of the divine service and sermons, according to the intent and true meaning of the said statutes and ordinances in that behalf, as is aforesaid, and shall take the said oath of supremacy in manner and form afore expressed; and yet nevertheless, from and after such submission and oath had and taken, every such heir shall be freed and discharged of all and singular the penalties, charges and incumbrances happening upon him or her in respect, or by reason of any of his or her ancestor's recusancy.

Sect. 5. " And be it further enacted by the authority of this present A third part of parliament, That where any seizure shall be had of the two parts of any his living shall lands, tenements, hereditaments, leases or farms, for the not payment of the remain clear to a recusant. twenty pounds, due and payable for each month, according to the statute 29 El. c. 6. in that case lately made and provided, That in every such case, every such two parts shall, according to the extent thereof, go towards the satisfaction and payment of the twenty pounds due and payable for each month, and unpaid by any such recusant: (2) and that the third part thereof shall not

The two parts
of a recusant's
lands, after his
death, shall re-
main in the
king's hands
until he be sa-
tisfied of the
arrearages.

not be extended or seized by the king's majesty, his heirs or successors, for not payment of the said twenty pounds payable for each month forfeited or lost by any such recusant: (3) and where any such seizure shall be had of the two parts of the lands, tenements, hereditaments, leases or farms of any such recusant, as is aforesaid, and such recusant shall die, (the debt or duty, by reason of his recusancy, not paid, satisfied or discharged) that in every such case, the same two parts shall continue in his majesty's possession, until the residue or remainder of the said debt or duty be thereby or otherwise paid, satisfied, or discharged: (4) and that his majesty, his heirs or successors, shall not seize or extend any third part descending to any such heirs, or any part thereof, either by reason of the recusancy of his or her ancestors, or the recusancy of any such heir.

None shall go
or send any
other to a se-
minary, &c.
3 Jac. 1, c. 5.

Sec. 6. " And be it further enacted by the authority of this present parliament, That all and every person and persons under the king's obedience, which at any time (after the end of this session of parliament) shall pass or go, or shall send, or cause to be sent, any child, or any other person under their or any of their government, into any the parts beyond the seas, out of the king's obedience, to the intent to enter into, or be resident in any college, seminary, or house of jesuits, priests, or any other popish order, profession or calling whatsoever, or repair in or to any the same, to be instructed, persuaded or strengthened in the popish religion, or in any sort to profess the same; every such person so sending, or causing to be sent, any child or other person, beyond the seas to any such purpose or intent, shall for every such offence forfeit to his majesty, his heirs and successors, the sum of one hundred pounds: and every such person so passing or being sent beyond the seas to any such intent and purpose, as is aforesaid, shall by authority of this present act, as in respect of him or herself only, and not to or in respect of any of his heirs or posterity, be disabled and made incapable to inherit, purchase, take, have or enjoy any manors, lands, tenements, annuities, profits, commodities, hereditaments, goods, chattels, debts, duties, legacies, or sums of money, within this realm of *England*, or any other his majesty's dominions: (3) and that all and singular estates, terms, and other interests whatsoever hereafter to be made, suffered or done, to or for the use or behoof of any such person or persons, or upon any trust or confidence, mediately or immediately, to or for the benefit or relief of any such person or persons, shall be utterly void, and of none effect, to all intents, constructions and purposes.

Farther pro-
visions relat-
ing hereto, 3
Car. 1, c. 2,
sec. 11.

They who be
in seminaries,
shall return.
27 El. c. 2.

Sec. 7. " And be it further enacted by the authority aforesaid, That if any person born within this realm, or any the king's majesty's dominions, be at this present in any college, seminary, house or place in any parts beyond the seas (to the end to be instructed or strengthened in the popish religion) which shall not make return into this realm, or some of his majesty's dominions, within one year next coming after the end of this session of parliament, and submit himself as is aforesaid, shall be in respect of himself only, and not to or in respect of any of his heirs or posterity, utterly disabled and incapable to inherit, have or enjoy any manors, lands, tenements,

Explained by
3 Geo. 1, c. 18.
sec. 4.

tenements, hereditaments, goods, chattels, debts, or other things aforesaid, within this realm, or any other his majesty's dominions. (2) Provided always, That if any *such* person or child so passing, sent, sending, or now being beyond the seas as aforesaid, to such intent as is before-mentioned, shall after become conformable and obedient unto the laws and ordinances of the church of *England*, and shall repair to the church, and there remain and be as is aforesaid, and continue in such conformity, according to the true intent and meaning of the said statutes and ordinances; that in every such case, every such person and child, for and during such time as he or she shall *so* continue in such conformity and obedience, shall be freed and discharged of all and every such disability and incapacity as is before-mentioned.

A remedy for such as do return into the realm, and become conformable to the laws.

Se^t. 8. " And be it further enacted by the authority of this present parliament, That no woman, nor any child under the age of twenty-one years (except sailors, or ship-boys, or the apprentice or factor of some merchant in trade of merchandize) shall be permitted to pass over the seas (except the same shall be by licence of the king, his heirs or successors, or of some six or more of the king's privy council, thereunto first had under their hands) (2) upon pain that the officers of the port that shall willingly or negligently suffer any such to pass, or shall not enter the names of such passengers licensed, shall forfeit his office, and all his goods and chattels; (3) and upon pain that the owner of any ship or vessel that shall wittingly or willingly carry any such over the seas without licence, as aforesaid, shall forfeit his ship or vessel, and all the tackle: (4) and every master or mariner of or in any ship or vessel offending as aforesaid, shall forfeit all their goods, and suffer imprisonment by the space of twelve months, without bail or mainprize.

No woman or child shall pass over the seas without licence.

3 Jac. 1, c. 5.

The forfeiture of those who do suffer them to pass.

Se^t. 9. " And be it further enacted by the authority aforesaid, That no person after the feast of St. *Michael* the archangel next, shall keep any school, or be a school-master, out of any the universities or colleges of this realm, except it be in some publick or free grammar-school, or in some such nobleman's or noblewoman's, or gentleman's or gentlewoman's house as are not recusants, or where the same school-master shall be specially licensed thereunto by the archbishop, bishop, or guardian of the spiritualities of that diocese; (2) upon pain that as well the school-master, as also the party that shall retain or maintain any such school-master, contrary to the true intent and meaning of this act, shall forfeit each of them, for every day so wittingly offending, forty shillings. (3) The one half of all the penalties and sums of money before-mentioned to be forfeited, to be to the king, his heirs and successors, the other to him or them that shall or will sue for the same, in any the courts of record at *Westminster*, by action of debt, bill, plaint or information, in which no essoin, protection or wager of law shall be allowed."

The forfeiture for being or keeping a school-master contrary to this act.

Carthew 464.
1 Ventr. 417.

STAT. 3 Jac. 1, c. 4. [*A. D. 1605, intituled*] “An act for the better discovering and repressing of popish recusants.”

“Forasmuch as it is found by daily experience, that many his majesty’s subjects, that adhere in their hearts to the popish religion, by the infection drawn from thence, and by the wicked and devilish council of jesuits, seminaries, and other like persons dangerous to the church and state, are so far perverted in the point of their loyalties and due allegiance unto the majesty and the crown of *England*, as they are ready to entertain and execute any treasonable conspiracies and practices, as evidently appears by that more than barbarous and horrible attempt to have blown up with gunpowder the king, queen, prince, lords and commons in the house of parliament assembled, tending to the utter subversion of the whole state, lately undertaken by the instigation of jesuits and seminaries, and in advancement of their religion, by their scholars taught and instructed by them to that purpose, which attempt by the only goodness of Almighty God was discovered and defeated: (2) and where divers persons popishly affected, do nevertheless, the better to cover and hide their false hearts, and with the more safety to attend the opportunity to execute their mischievous designs, repair sometimes to church, to escape the penalty of the laws in that behalf provided:

Some popishly affected do repair to the church.

Sec. 2. “For the better discovery therefore of such persons, and their evil affections to the king’s majesty, and the state of this his realm, to the end that being known, their evil purposes may be the better prevented; (2) be it enacted by the king’s most excellent majesty, the lords spiritual and temporal, and the commons in this present parliament assembled, and by the authority of the same, that every popish recusant convicted, or hereafter to be convicted, which heretofore hath conformed him or herself, or which shall hereafter conform him or herself, and repair to the church, and continue there during the time of divine service, according to the laws and statutes in that behalf made and provided, shall within the first year next after the end of this session of parliament (if he or she be conformed, as aforesaid, before the end of this session of parliament) or within the first year next after that he or she shall after this session of parliament so conform him or herself, and repair to church, as aforesaid, and after the said first year, shall once in every year following at the least, receive the blessed sacrament of the Lord’s supper, in the church of that parish where he or she shall most usually abide, or be within the said year, wherein by the true meaning of this statute, he or she ought so to receive.

1 El. c. 1.
5 El. c. 1.
13 El. c. 2.
23 El. c. 1.
27 El. c. 2.
29 El. c. 6.
35 El. c. 1 & 2.

The forfeiture of a conformed recusant, which doth not receive the sacrament of the Lord’s Supper yearly.

Cio Jac. 365.

Sec. 3. “And if there be no such parish church, then in the church next adjoining to the place of his or her such most usual abode: (2) and if any recusant so conformed, shall not receive the said sacrament of the Lord’s supper accordingly, he or she shall for such not receiving, lose and forfeit for the first year, twenty pounds, and for the second year, for such not receiving, forty pounds, and for every year after, for such not receiving, three score pounds, until he or she shall have received the said sacrament,

crament, as is aforesaid: (3) and if after he or she shall have received the said sacrament, as is aforesaid, and after shall oftfoons at any time offend in not receiving the said sacrament, as is aforesaid, by the space of one whole year, That in every such case, the person so offending, shall for every such offence lose and forfeit threescore pounds of lawful *English* money; (4) the one moiety to be to our sovereign lord the king's majesty, his heirs and successors, and the other moiety to him that will sue for the same; (5) and to be recovered in any of the king's courts of record at *Westminster*, or before justices of assize or general gaol-delivery, or before justices of the peace at their general quarter-sessions, by action of debt, bill, plaint or information, wherein no essoin, protection, or wager of law shall be allowed.

Sett. 4. " And be it further enacted by the authority of this present parliament, That the church-wardens and constables of every town, parish or chapel, for the time being, or some one of them, or if there be none such, then the chief constables of the hundred where such town, parish or chapel is or shall be, or one of them, as well in places exempt, as not exempt, shall once in every year present the monthly absence from church of all and all manner of popish recusants within such towns and parishes; (2) and shall present the names of every of the children of the said recusants, being of the age of nine years and upwards, abiding with their said parents, and as near as they can, the age of every of the said children, as all the names of the servants of such recusants, at the general or quarter-sessions of that shire, limit, division or liberty.

Presenting the monthly absence from church of a recusant.
1 Shower 309.

A recusant's children and servants.

Sett. 5. And be it further enacted by the authority aforesaid, That all such presentments shall be accepted, entred and recorded in the said sessions by the clerk of the peace, or town-clerk for the time being, or his deputy, without any fee to be had, asked or taken for the same: (2) and in default of such presentment to be made, the said church-wardens, constables, or high constables respectively, shall for every such default, forfeit twenty shillings; (3) and in default of such accepting, entring and recording without fee, as aforesaid, the said clerk of the peace, or town-clerk, shall for every such offence, forfeit and lose forty shillings.

The presentments recorded.

Sett. 6. " And that upon every presentment of such monthly absence, as aforesaid, whereupon such party so presented, shall after happen to be indicted and convicted (not being for the same absence before presented) then the said churchwardens, constables, or high-constables respectively, so making such presentments, shall have a reward of forty shillings; (2) to be levied out of the recusants goods and estate, in such manner and form as by the more part of the said justices shall be by warrant under their hands and seals, then and there ordered and appointed.

The reward of the churchwardens and constables.

Sett. 7. " And be it further enacted by the authority aforesaid, That the justices of assize and gaol-delivery at their assizes, and the said justices of peace at any of their said sessions, shall have power and authority by virtue of this act, to enquire, hear and determine of all recusants and offences, as well for not receiving the sacrament aforesaid, according to the meaning of this law, as for not repairing to church, according to the mean-

What officers shall enquire of offenders.

The effect of
the procla-
mation.

Conviction of
a recusant.

The penalty
of a convicted
recusant.

29 El. c. 6.

Every convic-
tion shall be
certified into
the exchequer.

ing of former laws, in such manner and form as the said justices of assize and gaol-delivery do, or may now do by former laws, in case of recusancy for not repairing to church; (2) and also shall have power at their assizes and gaol-delivery, and at the sessions (in which any indictment against any person, either for not repairing to church according to former laws, or not receiving the said sacrament according to this law, shall be taken) to make proclamation, by which it shall be commanded, that the body of every such offender shall be rendered to the sheriff of the same county, or bailiff, or other keeper of the gaol of the liberty, before the next assizes and general gaol-delivery, or before the next general or quarter-sessions respectively to be holden for the said shire, limit, division or liberty; (3) and if at the said next assizes and general gaol-delivery or sessions, the same offender so proclaimed, shall not make appearance of record, That then upon every such default recorded, the same shall be as sufficient conviction in law of the said offence whereof the party shall stand indicted, as aforesaid, as if upon the same indictment, a trial by verdict thereupon had proceeded, and been found against him or her, and recorded.

Stat. 8. " And be it further enacted, That every offender in not repairing to divine service, but forbearing the same, contrary to the statutes in that behalf made and provided, that hereafter shall fortune to be thereof once convicted, shall in such of the terms of *Easter* and *Michaelmas* as shall be next after such conviction, pay into the receipt of the exchequer after the rate of twenty pounds for every month which shall be contained in the indictment, whereupon such conviction shall be; (2) and shall also for every month after such conviction, without any other indictment or conviction, forfeit twenty pounds, and pay into the receipt of the exchequer aforesaid, at two times in the year, that is to say, in every *Easter* and *Michaelmas* term, as much as then shall remain unpaid, after the rate of twenty pounds for every month after such conviction; (3) except in such cases where the king shall and may by force of this act refuse the same, and take two parts of the lands, tenements, hereditaments, leases and farms of such offender, till the said party being indicted for not coming to church, contrary to former laws, shall conform himself and come to church, according to the meaning of the statute in that behalf made and provided.

Stat. 9. " And that every conviction recorded for any offence before-mentioned, shall from the justices before whom the record of such conviction shall be remaining, be certified into the king's majesty's court of exchequer, before the end of the term following such conviction in such convenient certainty for the time, and other circumstances, as the court of exchequer may thereupon award out process for the seizure of the lands and goods of every such offender, as the cause shall require; (2) and if default shall be made in any part of any payment aforesaid, contrary to the form herein before-limited, that then and so often, the king's majesty, his heirs and successors, shall and may by process out of the said exchequer, take, seize and enjoy all the goods, and two parts as well
of

all the lands, tenements, leases and farms of such offender, as of all other the lands, tenements and hereditaments liable to seizure, or to the penalties aforesaid, by the true meaning of this act, leaving the third part only of the same lands, tenements and hereditaments, leases and farms, to and for the maintenance and relief of the said offender, his wife, children and family.

Sect. 10. "And whereas by an act made in the session of parliament holden by prorogation at *Westminster*, in the three and twentieth year of the reign of the late queen *Elizabeth*, intituled, *An act to retain the subjects of the said late queen in their due obedience*, It was amongst other things enacted by authority of the said parliament, That every person above the age of sixteen years, which should not repair to some church, chapel, or usual place of common-prayer, but forbear the same contrary to the tenor of a statute made in the first year of the reign of the said late queen, for uniformity of common prayer, and being thereof lawfully convicted, should forfeit to the said queen, for every month after the end of the said session of parliament which he or she should forbear, twenty pounds of lawful *English* money, as in and by the said act of parliament more at large appeareth:

Sect. 11. "And whereas afterward by another act of parliament of the said queen, it was further enacted by the authority of the said parliament (amongst other things) how and when the said payments of the said twenty pounds should be made, and that if default should be made in any part of any payment of the said twenty pounds, contrary to the form in the said last specified statute limited, that then, and so often, the said queen should and might by process out of her highness exchequer, take, seize and enjoy all the goods, and two parts as well of all the lands, tenements and hereditaments, leases and farms of such offender, as of all other the lands, tenements and hereditaments liable to such seizure, or to the penalties aforesaid, by the true meaning of the said act of parliament, leaving the third part only of the same lands, tenements and hereditaments, leases and farms, to and for the maintenance and relief of the same offender, his wife, children and family, as in and by the last specified statute more at large also may appear: (2) now forasmuch as the said penalty of twenty pounds monthly, is a greater burden unto men of small living, than unto such as are of better ability, and do refuse to come unto divine service, as aforesaid, who rather than they will have two parts of their lands to be seized, will be ready always to pay the said twenty pounds according to the limitation of the said statutes, and yet retain the residue of their livings and inheritance in their own hands, being of great yearly value, which they do for the most part employ (as experience hath taught) to the maintenance of superstition and popish religion, and to the relief of jesuits, seminaries, popish priests, and other dangerous persons to the state; (3) therefore to the intent that hereafter the penalty for not repairing to divine service, might be inflicted in better proportion upon men of great ability; (4) be it enacted by the authority of this present parliament, That the king's majesty, his heirs and successors, shall from and after the feast of Saint *Michael* the archangel next coming after the end of this session of parliament, refuse to take two parts

The stat. of 23 Eliz. c. 1, touching a recusant's monthly forfeiture.

1 Eliz. c. 2.

How by the statute of 29 El. c. 6, the queen should recover forfeitures due to her by recusants.

The king may refuse to take two parts

of a recusant's
lands.
Lane 106.
Godbolt 216.
pl. 309.

parliament, have full power and liberty to refuse the penalty of twenty pounds a month, though it be tendred ready to be paid according to the law, and thereupon to seize and take to his own use, and the uses, intents and purposes hereafter limited, two parts in three to be divided, as well of all the lands, tenements and hereditaments, leases and farms that at the time of such seizure shall be, or afterward shall come to any the said offenders, in not coming to church, or any other to his or her use, or in trust for him or her, or at his or her disposition, or whereby or wherewith, or in consideration whereof, such offender or his family, or any of them shall be relieved, maintained or kept, as of all other lands, tenements and hereditaments in any wise, or at any time liable to such seizure, or to the penalties aforesaid, and the same to retain to his own, and other uses, intents and purposes hereafter in this act appointed, till every such offender shall conform him or herself respectively, as aforesaid, in lieu and full recompence of the twenty pounds monthly, that during his such seizure and retainer shall incur; any thing in the said statutes, or any of them, or any other statute to the contrary in any wise notwithstanding: (5) saving to our sovereign lord the king's majesty, his heirs and successors, and all and every person and persons, bodies politick and corporate, their heirs and successors, (other than the said offender, his or her heirs, and all claiming to his or their use, or in trust for him or them, or at his or their will or disposition) all and all manner of leases, rents, conditions, and other rights and titles whatsoever had, made and done (*bona fide*) and without fraud and covin, before such seizure.

Saving the
right of o-
thers.

A recusant's
mansion-
house shall be
reserved to
him. The
king's two
parts shall not
be demised to
a recusant.

Sect. 12. " Provided always, and be it enacted by the authority aforesaid, That the king's majesty, his heirs and successors, shall not take into his two parts, but leave to such offender his chief mansion-house, as part of his third part, and shall not demise, lease, nor put over the said two parts, nor any part thereof to any recusant, nor to or for the use of any recusant: (2) and that whosoever shall take the same in lease, or otherwise of his majesty, his heirs and successors, shall give such security not to commit, nor suffer waste to be committed in or upon any the said premises, as by the court of exchequer shall be allowed sufficient.

Who are com-
pellable to
take the oath.

Sect. 13. " And for the better trial how his majesty's subjects stand affected in point of their loyalty and due obedience; (2) be it also enacted by the authority aforesaid, That from and after the end of this present session of parliament, it shall be lawful to and for any bishop in his diocese, or any two justices of peace, whereof one of them to be of the *quorum*, within the limits of their jurisdiction, out of the sessions, to require any person of the age of eighteen years or above, being, or which shall be convict or indicted of or for any recusancy, other than noblemen or noblewomen, for not repairing to divine service, according to the laws of this realm; (3) or which shall not have received the said sacrament twice within the year then next past, noblemen and noblewomen excepted; (4) or any person passing in or through the country, shire or liberty, and unknown, except as is last before excepted, that being examined by them upon oath shall confess, or not deny himself or herself to be a recusant, or shall con-

feels or not deny that he or she had not received the sacrament twice within the year then last past, to take the oath hereafter following upon the holy evangelists: (5) Which said bishop, or two justices of the peace, shall certify in writing subscribed with his or their hands at the next general or quarter sessions for that shire, limit, division or liberty within which the said oath shall be so taken, the christian-name, sir-name, and place of abode of every person which shall so take the said oath; which certificate shall be there recorded by the clerk of the peace, or town-clerk, and kept amongst the records of the said sessions.

Certificate of the name of him who taketh the oath.

SECT. 14. " And be it further enacted, That if any such person or persons, other than noblemen or noblewomen, shall refuse to answer upon oath to such bishop or justices of peace examining him or her, as aforesaid, or to take the said oath so duly tendred unto him or her by such bishop, or two such justices of peace, out of sessions, That then the said bishop or justices of peace shall and may commit the same person to the common gaol, there to remain without bail or mainprize, until the next assize, or general or quarter-sessions to be holden for the said shire, division, limit or liberty; (2) where the said oath shall be again in the said open assizes or sessions required of such person, by the said justices of assize, or justices of peace then and there present, or the greater number of them: (3) And if the said person or persons, or any other person whatsoever, other than noblemen or noblewomen, of the age of eighteen years or above, shall refuse to take the said oath being tendred unto him or her by the justices of assize and gaol delivery, in their open assizes, or the justices of peace, or the greater part of them, in their said general or quarter-sessions, every person so refusing, shall incur the danger and penalty of *præmunire*, mentioned in the statute of *præmunire*, made in the sixteenth year of the reign of king Richard the second; (4) except women covert, who upon refusal of the said oath, shall be by the said justices of assize in their open assize, or justices of peace in their general or quarter-sessions, for the said offence, committed only to the common gaol, there to remain without bail or mainprize, till they will take the said oath.

Refusal of the oath.

1 Bulstr. 199,

The penalty of *præmunire*, 16 R. 2, c. 5, Woman covert.

The Tenor of which Oath hereafter followeth ::

SECT. 15. " **I** A. B. do truly and sincerely acknowledge, profess, testify and declare in my conscience before God and the world, That our sovereign lord king JAMES is lawful and rightful king of this realm, and of all other his majesty's dominions and countries; and that the pope neither of himself, nor by any authority of the church or see of Rome, or by any other means with any other, hath any power or authority to depose the king, or to dispose of any of his majesty's kingdoms or dominions, or to authorize any foreign prince to invade or annoy him, or his countries, or to discharge any of his subjects of their allegiance and obedience to his majesty, or to give licence or leave to any of them to bear arms, raise tumults, or to offer any violence or hurt to his majesty's royal

The form of the oath of obedience.

Abolished by 1 W. & M. sess. 1, c. 8, sect. 2.

royal person, state or government, or to any of his majesty's subjects within his majesty's dominions.

(2) "Also I do swear from my heart, That notwithstanding any declaration or sentence of excommunication, or deprivation made or granted, or to be made or granted by the pope or his successors, or by any authority derived, or pretended to be derived from him or his see, against the said king, his heirs or successors, or any absolution of the said subjects from their obedience: I will bear faith and true allegiance to his majesty, his heirs and successors, and him and them will defend to the uttermost of my power, against all conspiracies and attempts whatsoever, which shall be made against his or their persons, their crown and dignity, by reason or colour of any such sentence or declaration, or otherwise, and will do my best endeavour to disclose and make known unto his majesty, his heirs and successors, all treasons and traitorous conspiracies, which I shall know or hear of to be against him or any of them.

(3) "And I do further swear, That I do from my heart abhor, detest, and abjure, as impious and heretical, this damnable doctrine and position, That princes which be excommunicated or deprived by the pope, may be deposed or murdered by their subjects, or any other whatsoever.

(4) "And I do believe, and in my conscience am resolved, That neither the pope, nor any other person whatsoever, hath power to absolve me of this oath, or any part thereof, which I acknowledge by good and full authority to be lawfully ministered unto me, and do renounce all pardons and dispensations to the contrary.

(5) "And all these things I do plainly and sincerely acknowledge and swear, according to these express words by me spoken, and according to the plain and common sense and understanding of the same words, without any equivocation, or mental evasion, or secret reservation whatsoever: And I do make this recognition and acknowledgment heartily, willingly, and truly, upon the true faith of a christian.

"So help me God."

(6) "Unto which oath so taken, the said person shall subscribe his or her name or mark.

No indictment of a recusant shall be reversed for default of form.

Palmer 41.
22 Co. 132.

Stat. 16. "And be it further enacted by the authority aforesaid, That no indictment or indictments had or found, or hereafter to be had or found against any person or persons, for not repairing to some church or chapel, or usual place of common prayer, but absenting him or herself by the space of one month, contrary to the laws and statutes in that behalf provided, or for not receiving the said sacrament contrary to this present law, nor any proclamation, outlawry, or other proceeding thereupon, shall at any time hereafter be avoided, discharged or reversed, by reason of any default in form, or lack of form, or other defect whatsoever, (other than by direct traverse to the point of not coming to church, or not receiving the said sacrament) whereof such person or persons hath been or shall be indicted, but the same indictment shall stand in force, and be proceeded

ceeded upon; any such default of form, or other defect whatsoever, notwithstanding.

Sett. 17. " Provided always, That if any person or persons so indicted, or to be indicted, shall at any time hereafter submit and conform him or herself, and become obedient to the laws of the church of *England*, and repair to the parish church of his or her most abiding; and if there be no such, then to the church next adjoining to his or her such dwelling, and there hear divine service, according to the true meaning of the statute in that behalf made and provided, and there publickly receive the said sacrament, according to the laws of this realm of *England* now established; That then every such person and persons so convicted, shall and may from thenceforth be admitted and allowed to avoid, discharge, reverse and undo the said indictment and indictments, and all proceedings thereupon, in such manner and form as if this present act had not been had nor made; any thing herein contained to the contrary in any wise notwithstanding.

Sett. 18. " And forasmuch as it is found by late experience, That such as go voluntarily out of this realm of *England*, to serve foreign princes, states or potentates, are for the most part perverted in their religion and royalty by jesuits and fugitives, with whom they do there converse; (2) Be it therefore enacted by the authority aforesaid, That every subject of this realm that after the tenth day of *June* next coming, shall go or pass out of this realm to serve any foreign prince, state or potentate, or shall after the said tenth day of *June* pass over the seas, and there shall voluntarily serve any such foreign prince, state or potentate, not having before his or their going or passing, as aforesaid, taken the oath aforesaid, before the officer hereafter appointed, shall be a felon.

Sett. 19. " And that if any gentleman or person of higher degree, or any person or persons which hath born, or shall bear any office or place of captain, lieutenant, or any other place, charge, or office in camp, army, or company of soldiers, or conduct of soldiers, shall after go or pass voluntarily out of this realm, to serve any such foreign prince; state or potentate, or shall voluntarily serve any such prince, state or potentate, before that he and they shall become bound by obligation, with two such sureties as shall be allowed of by the officers, which are hereafter by this act limited to take the same bond, unto our sovereign lord the king's majesty, his heirs or successors, in the sum of twenty pounds of currant *English* money at the least, with condition to the effect following, shall be a felon.

The tenor of which condition followeth, viz.

Sett. 20. " **T**HAT if the within bounden, &c. shall not at any time then after be reconciled to the pope or see of *Rome*, nor shall enter into, or consent unto any plot, or conspiracy whatsoever, against the king's majesty, his heirs and successors, or any his and their estate and estates, realms or dominions; but shall within convenient time after knowledge thereof had, reveal and disclose to the king's majesty, his heirs and successors, or some of the lords of his or their honourable

able privy council, all such practices, plots and conspiracies; that then the said obligation be void.

Who shall take the obligation and administer the oath.

Stat. 21. " And that for the due execution of this branch of this present law, it shall and may be lawful to and for the customer and comptroller of every port, haven or creek, or one of them, and their or either of their deputy or deputies, and none other, to receive and accept all and every such bond and obligation to and for the uses aforesaid, and to minister and give the oath aforesaid, according to the true intent of this statute, (taking for such bond six-pence and no more, and for the said oath no fee

Forfeiture for not registering and certifying.

at all:) (2) which said customer and comptroller shall register and certify all and every such bond and oath so taken, into the court of exchequer at *Westminster* once every year, upon pain of five pounds for every bond not so certified, and twenty shillings for every oath not so certified.

(3) Provided always, That this last mentioned branch shall not extend to any person or persons which are already gone, or shall go beyond the seas to serve any foreign prince, state or potentate, before the tenth day of *June* next coming, for his said going or passing before the said tenth day of *June*.

Putting in practice to absolve or withdraw any from obedience, or to reconcile them to the pope.
23 Eliz. c. 1.

Stat. 22. " And be it further enacted by the authority aforesaid, That if any person or persons at any time after the said tenth day of *June*, shall either upon the seas, or beyond the seas, or in any other place within the dominions of the king's majesty, his heirs or successors, put in practice to absolve, persuade, or withdraw any of the subjects of the king's majesty, or of his heirs and successors of this realm of *England*, from their natural obedience to his majesty, his heirs or successors; (2) or to reconcile them to the pope or see of *Rome*, or to move them or any of them to promise obedience to any pretended authority to the see of *Rome*, or to any other prince, state or potentate; That then every such person, their procurers, counsellors, aiders and maintainers, knowing the same, shall be to all intents adjudged traitors, and being thereof lawfully convicted, shall have judgment, suffer and forfeit as in cases of high treason.

Being withdrawn or reconciled.

Stat. 23. " And if any such person, as aforesaid, at any time after the said tenth day of *June*, shall be either upon the seas, or beyond the seas, or in any other place within the dominions of the king's majesty, his heirs or successors, willingly absolved or withdrawn, as aforesaid, or willingly reconciled, or shall promise obedience to any such pretended authority, prince, state or potentate, as aforesaid: That every such person or persons, their procurers and counsellors, aiders and maintainers, knowing the same, shall be to all intents adjudged traitors; and being thereof lawfully convicted, shall have judgment, suffer and forfeit as in cases of high treason.

A reconciled person taking the oath.

Stat. 24. " Provided nevertheless, That the last mentioned clause of this branch, or any thing therein contained, shall not extend, or be taken to extend to any person or persons whatsoever, which shall hereafter be reconciled to the pope or see *Rome*, as aforesaid, (for and touching the point of so being reconciled only) that shall return unto this realm, and thereupon

thereupon within six days next after such return, before the bishop of the diocese, or two justices of the peace (jointly or severally) of the county where he shall arrive, submit himself to his majesty and his laws, and take the oath set forth by act in the first year of the reign of the late queen *Elizabeth*, (commonly called the oath of supremacy) as also the oath before set down in this present act; (2) which said oaths the said bishop and justices respectively shall have power and authority by this present act to administer to such persons, as aforesaid: (3) and the said oaths so taken, the said bishop and justices before whom the said oaths shall be so taken respectively, shall certify at the next general or quarter-sessions of the peace to be holden within the said shire, limit, division or liberty wherein such person, as aforesaid shall submit himself, and take the said oaths, as aforesaid, upon pain of every one neglecting to certify the same as aforesaid, the sum of forty pounds.

Stat. 25. "And be it further enacted, That all and every person and persons that shall offend contrary to this present branch of this statute, shall be indicted, tried, and proceeded against, by and before the justices of assize and gaol-delivery of that county for the time being, or before the justices of the court of king's bench, and be there proceeded against according to the laws and statutes of this realm against traitors, as if the said offence had been committed in the same county where such person or persons shall be so taken; any law, custom, or statute to the contrary in any wise notwithstanding.

Stat. 26. "Provided always, That if any peer of this realm shall happen to be indicted of any offence made treason by this act, he shall have his trial by his peers, as in other like cases of treason is accustomed.

Stat. 27. "And be it further enacted, That if any subject of this realm, at any time after one month next after the end of this present session of parliament, shall not resort or repair every *Sunday* to some church, chapel, or some other usual place appointed for common prayer, and there hear divine service, according to the statute made in that behalf, in the first year of the reign of the late queen *Elizabeth*, That then it shall and may be lawful to and for any one justice of peace of that limit, division or liberty wherein the said party shall dwell, upon proof unto him made of such default by confession of the party, or oath of witness, to call the said party before him; (2) and if he or she shall not make a sufficient excuse, and due proof thereof, to the satisfaction of the said justice of peace, it shall be lawful for the said justice of peace to give warrant to the churchwarden of the said parish wherein the said party shall dwell, under his hand and seal, to levy twelve-pence for every such default, by distress and sale of the goods of every such offender, rendering to the said offender the overplus of the money raised of the said goods so to be sold: (3) and that in default of such distress, it shall and may be lawful for the said justice of peace to commit every such offender to some prison within the said shire, division, limit or liberty wherein such offender shall be inhabiting, until payment be made of the said sum or sums so to be forfeited; (4) which forfeiture shall be employed to and for the use of the poor of that parish

1 Eliz. c. 1.
which is repealed by *1 W. & M. Sess. 1, c. 8, sect. 2.*

Where the trial shall be.

1 Eliz. c. 2.

The forfeiture for not repairing to church weekly.

wherein the offender shall be resident or abiding at the time of such offence committed.

Within what time the offender shall be impeached. *Sect. 28.* "Provided, That no man be impeached upon this clause, except he be called in question for his said default, within one month next after the said default made.

But once punished for one offence. *Sect. 29.* "And that no man being punished according to this branch, shall for the same offence be punished by the forfeiture of twelve-pence, upon the law made in the first year of the late queen *Elizabeth*.

A repeal of two branches of the stat. of 35 Eliz. c. 1, sect. 8. *Sect. 30.* "And because in one act of parliament begun and holden at *Westminster*, in the five and thirtieth year of the late queen *Elizabeth*, intituled, *An act to retain the queen's majesty's subjects in their due obedience*, there are two branches contained, the first beginning thus: (and for that every person having a house or family, is in duty bounden to have especial regard of the good government and ordering of the same) and so forth to the next clause, beginning thus, (Provided nevertheless, That this act shall not in any wise extend to punish or impeach any persons for relieving, &c. ending with these words, any thing in this act contained to the contrary notwithstanding) which said two branches or clauses are found defective:

Sect. 31. "Be it therefore enacted, That the said two branches or clauses of the said act, and no more, shall be by authority of this present parliament, utterly repealed and made void.

Relieving or keeping a recusant in his house. *Sect. 32.* "And in lieu thereof be it enacted, That every person and persons which after one month next after the end of this present session of parliament, shall willingly maintain, retain, relieve, keep, or harbour in his or their house, any servant, sojourner or stranger, who shall not go to, or repair to some church or chapel, or usual place of common prayer, to hear divine service, but shall forbear the same by the space of one month together, not having a reasonable excuse, contrary to the laws and statutes of this realm, shall forfeit ten pounds for every month that he, she, or they shall so relieve, maintain, retain, keep or harbour any such servant, sojourner, or stranger in his or their house, so forbearing, as aforesaid.

Retaining a recusant in his service, fee, or livery. *Sect. 33.* "And that every person which shall within the time aforesaid, retain or keep in his, her or their service, fee or livery, any person or persons, which shall not go to, or repair to some church, chapel, or usual place of common prayer to hear divine service, but shall forbear the same by the space of one month together, shall for every month, he, she, or they shall so retain, keep or continue in his, her or their service, fee or livery, any such person or persons so forbearing, as aforesaid, knowing the same, ten pounds; the same penalties to be recovered and employed in manner and form hereafter following.

The father, mother, ward, &c. of person committed by authority. *Sect. 34.* "Provided nevertheless, That this act shall not in any wise extend to punish or impeach any person or persons, for maintaining, retaining, relieving, keeping or harbouring his, her or their father or mother, wanting, without fraud or covin, other habitation, or sufficient maintenance, or the ward of any such person, or any person that shall be committed by authority

rity to the custody of any by whom they shall be so relieved, maintained or kept; any thing in this act to the contrary notwithstanding.

Sec. 35. " And be it further enacted by the authority of this present parliament, That upon any lawful writ, warrant or process awarded to any sheriff or other officer, for the taking or apprehending of any popish recusant, standing excommunicated for such recusancy, it shall be lawful for such sheriff, or other officer authorized in that behalf, if need be, to break open any house wherein such person excommunicate shall be, or to raise the power of the county, for the apprehending of such person, and the better execution of such warrant, writ or process. Breaking a house to take a recusant excommunicate.

Sec. 36. " And be it further enacted, That all and every offence to be committed or done against this present act, shall and may be enquired of, heard and determined before the justices of the king's bench, justices of assize and gaol-delivery, in their several assizes, and gaol-deliveries; (2) And all offences, other than treason, shall be enquired, heard and determined before the justices of peace in their general or quarter-sessions to be holden within the shire, division, limit or liberty wherein such offence shall happen. In what courts the offences shall be heard and determined.

Sec. 37. " Provided always, and be it enacted by the authority afore-said, That any attainder of felony made felony by this act, as is afore-said, shall not in any wise extend to take away the dower of the wife of any such person attainted, or be any bar for the recovery of the same, nor shall make or work any corruption of blood, or disheirson of any the heir or heirs of any such person or persons so attainted; this act, or any thing therein contained, to the contrary in any wise notwithstanding. Attainder of felony, no forfeiture of dower, or corruption of blood.

Sec. 38. " And be it further enacted, That if any action or actions shall at any time hereafter be commenced or brought against any person or persons doing, committing, or commanding any act or thing, for or concerning the execution of this present statute, or any article or clause therein contained; That then every defendant in such action or actions, may plead the general issue, and be received to maintain the same by any evidence that shall prove his doings and proceedings warrantable by this law. The plea to action brought for doing any thing by force of this statute.

Sec. 39. " Provided always, That neither this act, nor any thing therein contained, shall extend to take away or abridge the authority or jurisdiction of the ecclesiastical censures, for any cause or matter, but that the commissioners of his majesty, his heirs and successors, in causes ecclesiastical, for the time being, and the archbishops, bishops, and other ecclesiastical judges may do and proceed, as before the making of this act they lawfully did or might have done; any thing in this act to the contrary in any wise notwithstanding. The authority of the ecclesiastical court reserved.

Sec. 40. " Provided always, and be it enacted, That no person shall be charged or chargeable with any penalty or forfeiture by force of this act, which shall happen for his wife's offence in not receiving the said sacrament during her marriage, nor that any woman shall be charged or chargeable with any penalty or forfeiture by force of this act, for any such offence of not receiving, which shall happen during her marriage. No forfeiture for the wife's offence.

Who may
take the oath
of a nobleman
or woman.

16 R. 2, c. 5.

Who shall
take the oath
in the cinque
ports.

The reward of
him who dis-
covereth a
priest or mass.
2 Roll. 437.

Sec. 41. “ Provided also, and be it enacted by the authority of this present parliament, That in all causes where any bishop or justices of the peace may by force of this act require and take of any subject the oath above-mentioned, That the lords of the privy-council for the time being, or any six of them, whereof the lord chancellor, lord treasurer, or the principal secretary for the time, to be one, shall have full power and authority by force of this act, at any time or times, to require and take the said oaths before-mentioned, of any nobleman or noblewoman (then being above the age of eighteen years;) (2) And if any such nobleman or noblewoman (other than women married) shall refuse to take such oath or oaths, That in every such case, such nobleman or noblewoman shall incur the pain and danger of a *præmunire*.

Sec. 42. “ Provided also, and be it enacted by the authority of this parliament, That where any person or persons shall go or pass out of the cinque ports, or any member thereof, to any parts beyond the seas, to serve any foreign prince, state or potentate; that in every such case, the lord warden of the cinque ports for the time being, or any person by him in that behalf appointed or to be appointed, shall have full power and authority by virtue hereof, to take the bond, and minister the oath to such passengers, as is above-mentioned.

STAT. 3 Jac. 1, c. 5. [*A. D. 1605, intituled*] “ An act to prevent and avoid dangers which may grow by popish recusants.”

“ Whereas divers jesuits, seminaries and popish priests daily do withdraw many of his majesty’s subjects from the true service of Almighty God, and the religion established within this realm, to the Romish religion, and from their loyal obedience to his majesty, and have of late secretly persuaded divers recusants and papists, and encouraged and emboldened them to commit most damnable treasons, tending to the overthrow of God’s true religion, the destruction of his majesty and his royal issue, and the overthrow of the whole state and commonwealth, if God of his goodness and mercy had not within few hours before the intended time of the execution thereof, revealed and disclosed the same; (2) Wherefore to discover and prevent such secret damnable conspiracies and treasons as hereafter may be put in ure by such evil-disposed persons, if remedy be not therefore provided; (3) Be it enacted by the king’s most excellent majesty, the lords spiritual and temporal, and the commons in this present parliament assembled, and by the authority of the same, That such person as shall first discover to any justice of peace, any recusant or other person which shall entertain or relieve any jesuit, seminary, or popish priest, or shall discover any mass to have been said, and the persons that were present at such mass, and the priest that said the same, or any of them, within three days next after the offence committed, and that by reason of such discovery any of the said offenders be taken and convicted or attainted, That then the person which hath made such discovery, shall not only be freed from the danger and penalty of any law for such offence, if he be
an

an offender therein, but also have the third part of the forfeiture of all such sums of money, goods, chattels and debts which shall be forfeited by such offence, (so as the same total forfeiture exceed not the sum of one hundred and fifty pounds: (4) and if it exceed the sum of one hundred and fifty pounds, the said person so discovering the said offence, shall have the sum of fifty pounds only for every such discovery:) (5) and such person so discovering the same, after conviction of the offender, shall have a certificate from the judges or justices of peace before whom such conviction shall happen, to be directed to the sheriff or other officer of the same county, limit or place, that shall seize the goods, or levy the said forfeiture, commanding the said sheriff or other officer to pay the same accordingly to him that so discovered the same, out of the monies to be levied by virtue of the said forfeitures; which warrant and payment shall be effectual in the law for that purpose, and a sufficient discharge in that behalf for the sheriff, or other officer upon his account.

Seft. 2. " And whereas the repair of such evil-affected persons to the court, or to the city of *London*, may be very dangerous to his majesty's person, and may give them more liberty to meet, consult and plot their treasons and practices against the state, than if they should be restrained and confined unto their private houses in the country: (2) for remedy hereof, be it enacted by the authority aforesaid, That no popish recusant convicted, or to be convicted, shall come into the court or house where the king's majesty, or his heir apparent to the crown of *England* shall be, unless he be commanded so to by the king's majesty, his heirs and successors, or by warrant in writing from the lords and others of the most honourable privy council of the king's majesty, his heirs and successors, or any of them; (3) upon pain to forfeit for every time so offending, one hundred pounds; the one moiety to the king's majesty, his heirs and successors; the other moiety to him that will discover and sue for the same, by action of debt, bill, plaint or information in any of his majesty's courts of record, wherein no esoin, protection or wager of law shall be allowed.

A recusant shall not come to the court.

Seft. 3. " And that all popish recusants indicted or convicted, and all other persons which have not repaired to some usual church or chapel, and there heard divine service, but have forborn the same by the space of three months last past, contrary to the laws and statutes of this realm, dwelling, abiding or remaining within the city of *London*, or the liberties thereof, or within ten miles of the said city, shall within three months next after the end of this session of parliament, depart from the said city of *London*, and ten miles compass of the same; (2) and also shall deliver up their names to the lord mayor of *London*, in case such recusant do dwell or remain within the city of *London*, or the liberties thereof: (3) and in case the said recusant shall dwell or remain in any other county within ten miles of the same city, then the said recusant shall deliver up his or her name to the next justice of peace within such county where the said recusant shall so dwell or remain, within forty days after the end of this session of parliament; (4) upon pain that every person offending herein, shall forfeit to our

Recusants shall depart from London.

our sovereign lord the king's majesty, his heirs and successors, the sum of of one hundred pounds; the one moiety whereof shall be to the king's majesty, his heirs and successors; the other moiety to him or them that will sue for the same by action of debt, bill, plaint or information in any of the king's majesty's courts of record, wherein no essoin, protection or wager of law shall be admitted or allowed.

Sect. 4. "And that all popish recusants which shall hereafter come, dwell or remain within the said city of *London*, or the liberties thereof, or within ten miles of the said city, which now are, or hereafter shall be indicted or convicted of such recusancy, or which shall at any time hereafter not repair unto some usual church or chapel, and there hear divine service, but shall forbear the same by the space of three months, contrary to the laws and statutes of this realm, shall within ten days after such indictment or conviction, depart from the said city of *London*, and ten miles compass of the same, and also shall deliver up their names to the lord mayor of *London*, for the time being, in case such recusant shall dwell or remain within the said city of *London*, or the liberties thereof; (2) and in case the said recusant shall dwell or remain in any other county within ten miles of the said city, then the said recusant shall deliver up his or her name to the next justice of peace within such county where the said recusant shall so dwell or remain, within the said ten days next after such indictment or conviction; (3) upon pain that every person offending herein, shall likewise forfeit to our said sovereign lord the king's majesty, his heirs and successors, the like sum of an hundred pounds; the one moiety whereof shall be to the king's majesty, his heirs and successors, and the other to him or them that will sue for the same by action of debt, bill, plaint or information, in any of the king's majesty's courts of records, wherein no essoin, protection or wager of law shall be admitted or allowed.

Tradesmen
and dwellers
in London.

Sect. 5. "Provided always, That such person or persons as now use any trade, mystery or manual occupation within the said city of *London*, or within ten miles of the same, and such as have or shall have their only dwelling within the said city, or ten miles compass of the same, not having any other dwelling or place of abode elsewhere, shall or may remain and continue in such place within the said city, or ten miles of the same, as they have dwelled, inhabited or remained in by the space of three months next before this present session of parliament; any thing herein contained to the contrary notwithstanding.

35 Eliz. c. 2. *Sect. 6.* "And whereas by a statute made at *Westminster* in the five and thirtieth year of the reign of queen *Elizabeth*, intituled, An act for the restraining of popish recusants to some certain place of abode, it was amongst other things ordained and enacted, That every popish recusant then or after convicted for not repairing to church, chapel, or usual place of common prayer, having any certain place of dwelling and abode within this realm, should within the time limited by the said statute, repair to their place of usual dwelling and abode, or not having any certain place of dwelling or abode within this realm, should likewise within the time limited by the said statute, repair to the place where such person was born,

or where the father or mother of such person should be dwelling, and not at any time remove or pass above five miles from thence, under the pains of the said statute limited and provided; (2) which statute, by reason of sundry licences given unto such recusants, under colour of a proviso in the said statute contained, hath not wrought that good effect in the commonwealth as was hoped: (3) Be it therefore enacted and ordained by this present parliament, and by the authority of the same, That the said statute made in the said five and thirtieth year of the said queen *Elizabeth*, for and concerning the confining of the said recusants under the pains and penalties therein contained, shall by this act, and by the authority of the same, be confirmed, and be hereafter put in due execution, according to the tenor, true intent and meaning of the said statute in that behalf made: (4) And that the said proviso in the said statute contained, giving power to grant licence or licences unto the said recusants, to go and travel from or out of the compass of the said five miles, shall be from and after the end of this present session of parliament, utterly repealed and void; any thing in the said statute to the contrary notwithstanding.

A repeal of a proviso contained in the statute of 35 Eliz. c. 2, touching licence to recusants.

Sec. 7. " Provided nevertheless, and be it further enacted by this present parliament, and by the authority of the same, That it shall and may be lawful for the king's most excellent majesty, his heirs and successors, or for three or more of his majesty's most honourable privy council, or for three or more of the privy council of his heirs and successors, in writing under the hands of the said privy counsellors, to give licence to every such recusant to go and travel out of the compass of the said five miles, for such time as in the said licence shall be contained, for their travelling, attending, and returning, and without any other cause to be expressed within the said licence: (2) and if any of the persons which are so confined by virtue of the said statute, as is aforesaid, shall have necessary occasion or business to go and travel out of the compass of the said five miles, that then, and in every such case, upon licence in writing in that behalf to be gotten, under the hands and seals of four of the justices of peace for the same county, limit, division or place next adjoining to the place of abode of such recusant, with the privy and assent in writing, of the bishop of the diocese, or of the lieutenant, or of any deputy lieutenant of the same county residing within the said county or liberty, under their hands and seals; (3) in every of which licence or licences in writing so to be had and made, shall be specified and contained both the particular cause of the said licence, and the time how long the said party licensed shall be absent, in travelling, attending, and returning: (4) it shall and may thereupon be lawful for every such person so licensed, to go and travel about such their necessary business, and for such time only for their travelling, attending and returning, as shall be comprised in the said licence, the said party so licensed first taking his corporal oath before the said four justices of the peace, or any of them (who shall have authority by virtue of this act to minister the same) that he hath truly informed them of the cause of his journey, and that he shall not make any causeless stays: (5) and that all and every licence hereafter to be made in this behalf, contrary to the tenor,

Licence to a recusant confined. Cro. Jac. 352.

The effect of a licence to

be granted by tenor, effect and true meaning of this statute, shall be utterly void, four justices frustrate, and of none effect; any thing in the said former act or in this of peace. act to the contrary notwithstanding. (6) And every person so confined,

35 Eliz. c. 2. which shall depart or go above five miles from the place whereunto he is or shall be confined, not having such licence, and not having taken such oath as aforesaid, shall incur the pain and penalty, and forfeit as a recusant convicted, and passing or going above five miles from the said place whereunto he is or shall be confined by the said statute of *Tricesimo quinto Elizabethæ*, should do.

A recusant disabled to practice certain offices and functions. *Señ. 8.* " And be it further enacted by the authority aforesaid, That no recusant convict shall at any time after the end of this session of parliament, practice the common law of this realm, as a counsellor, clerk, attorney or solicitor in the same, nor shall practice the civil law, as advocate or proctor; (2) nor practice physic, nor use or exercise the trade or art of an apothecary; (3) nor shall be judge, minister, clerk or steward, of or in any court, or keep any court, nor shall be register or town-clerk, or other minister or officer in any court; (4) nor shall bear any office or charge, as captain, lieutenant, corporal, serjeant, ancient-bearer, or other office in camp, troop, band or company of soldiers; nor shall be captain, master, governor, or bear any office of charge of or in any ship, castle or fortrefs of the king's majesty's, his heirs and successors; (5) but be utterly disabled for the same: (6) and every person offending herein, shall also forfeit for every such offence, one hundred pounds; the one moiety whereof shall be to the king's majesty, his heirs and successors, and the other moiety to him that will sue for the same by action of debt, bill, plaint or information, in any of the king's majesty's courts of record, wherein no essoin, protection or wager of law shall be admitted or allowed.

No recusant shall be a publick officer. *Señ. 9.* " And be it also enacted by the authority aforesaid, That no popish recusant convict, nor any having a wife being a popish recusant convict, shall at any time after the end of this session of parliament, or any popish recusant hereafter to be convict, or having a wife which hereafter shall be a popish recusant convict, at any time after his or her conviction, shall exercise any publick office or charge in the commonwealth, but shall be utterly disabled to exercise the same by himself, or by his deputy, (except such husband himself, and his children, which shall be above the age of nine years abiding with him, and his servants in household, shall once every month at the least, not having any reasonable excuse to the contrary, repair to some church or chapel usual for divine service, and there hear divine service; (2) and the said husband, and such his children and servants as are of meet age, receive the sacrament of the Lord's supper, at such times as are limited by the laws of this realm, and do bring up his said children in true religion.)

A woman married recusant. *Señ. 10.* " And be it also enacted by the authority aforesaid, That every married woman, being, or that shall be a popish recusant convict, (her husband not standing convicted of popish recusancy) which shall not conform herself, and remain conformed, but shall forbear to repair to some church or usual place of common prayer, and there to hear divine service

service and sermon, if any then be, and within the said year receive the sacrament of the Lord's supper, according to the laws of this realm, by the space of one whole year next before the death of her said husband, shall forfeit and lose to the king's majesty, his heirs and successors, the issues and profits of two parts of her jointure, and two parts of her dower in three parts to be divided during her life, of or out of any the lands, tenements or hereditaments, which are or were her said husband's, and also be disabled to be executrix or administratrix of her said husband, and to have or demand any part or portion of her said late husband's goods or chattles, by any law, custom or usage whatsoever.

Sect. 11. " And be it further enacted by the authority aforesaid, That every popish recusant, which is or shall be convicted of popish recusancy, shall stand and be reputed to all intents and purposes disabled, as a person lawfully and duly excommunicated, and as if he or she had been so denounced and excommunicated according to the laws of this realm, until he or she so disabled shall conform him and herself, and come to church, and hear divine service, and receive the sacrament of the Lord's supper, according to the laws of this realm, and also take the oath appointed and prescribed in one other act made this present session of parliament, intituled, *3 Jac. 1, c. 4.* An act for the better discovering and repressing of popish recusants: (2) and that every person or persons sued or to be sued by such person so to be disabled, shall and may plead the same in disabling of such plaintiff, as if he or she were excommunicated by sentence in the ecclesiastical court.

Sect. 12. " Provided nevertheless, That it shall and may be lawful for any such person so disabled, for and notwithstanding any thing in this law contained, to sue or prosecute any action or suit, for or concerning only such of his or her lands, tenements, leases, rents, annuities and hereditaments, or for the issues and profits thereof, which are not to be seized, or taken into the king's hands, his heirs or successors, by force of any law, for or concerning his or her recusancy, or any part thereof.

Sect. 13. " And for that popish recusants are not usually married, nor their children christened, nor themselves buried according to the law of the church of *England*, but the same are done superstitiously by popish persons in secret, whereby the days of their marriages, births and burials cannot be certainly known; (2) Be it further enacted by authority of this present parliament, That every man being, or which shall be a popish recusant convicted, and who shall be hereafter married otherwise than in some open church or chapel, and otherwise than according to the orders of the church of *England*, by a minister lawfully authorized, shall be utterly disabled and excluded to have any estate of freehold into any the lands, tenements and hereditaments of his wife, as tenant by the courtesy of *England*: (3) and that every woman being, or which shall be a popish recusant convicted, and who shall be hereafter married in other form than, as aforesaid, shall be utterly excluded and disabled, not only to claim any dower of the inheritance of her husband, whereof she may be endowable, or any jointure of the lands and hereditaments of her husband, or any of his ancestors, but also of her widow's estate, and frank bank in any

A recusant shall be as excommunicated. 2 Bullr. 155.

What actions a recusant may prosecute. Latch. 172, 177.

Recusants marriages by priests, &c.

customary lands whereof her husband died seised, and likewise be disabled and excluded to have or enjoy any part or portion of the goods of her said husband, by virtue of any custom of any county, city or place where the same shall lie or be : (4) and if any such man shall be married with any woman contrary to the intent and true meaning of this act, which woman hath or shall have no lands, tenements or hereditaments, whereof he may be entituled to be tenant by the courtesy, then such man so marrying, as aforesaid, shall forfeit and lose an hundred pounds ; the one half thereof to be to the king's majesty, his heirs and successors, and the other moiety to such person or persons as shall sue for the same by action of debt, bill, plaint or information, in any of the king's majesty's courts of record, wherein no essoin, protection or wager of law shall be admitted or allowed.

The baptism
of recusants
children.

Seet. 14. " And that every popish recusant which shall hereafter have any child born, shall within one month next after the birth thereof, cause the same child to be baptized by a lawful minister, according to the laws of this realm, in the open church of the same parish where the child shall be born, or in some other church near adjoining, or chapel where baptism is usually administred : or if by infirmity of the child it cannot be brought to such place, then the same shall, within the time aforesaid, be baptized by the lawful minister of any of the said parishes or places, aforesaid ; (2) upon pain that the father of such child, if he be living by the space of one month next after the birth of such child, or if he be dead within the said month, then the mother of such child shall for every such offence forfeit an hundred pounds of lawful money of *England* ; one third part whereof to be to the king's majesty, his heirs and successors ; one other third part to the informer, or him that will sue for the same, and the other third part to the poor of the said parish, to be recovered by action of debt, bill, plaint or information, in any of the king's majesty's courts of record, wherein no essoin, protection or wager of law shall be admitted or allowed.

The forfeiture
for burying
recusants, not
excommuni-
cate, out of
the church or
church-yard.

Seet. 15. " And if any popish recusant, man or woman, not being excommunicate, shall be buried in any place, other than in the church or church-yard, or not according to the ecclesiastical laws of this realm, that the executors or administrators of every such person so buried, knowing the same, or the party that causeth him to be so buried, shall forfeit the sum of twenty pounds ; the one third part whereof shall be to our sovereign lord the king ; the other third part to the informer, or him or them that will sue for the same, and the other third part to the poor of the parish where such person died, to be recovered by action of debt, bill, plaint or information, in any of the king's majesty's courts of record, wherein no essoin, protection or wager of law shall be admitted or allowed.

The forfeiture
of children
departing the
realm.

3 Jac. 1, c. 4.
Hob. 73.
1 Roll. 108.

Seet. 16. " And be it further enacted by this present parliament, That if the children of any subject within this realm (the said children not being foldiers, mariners, merchants, or their apprentices or factors) to prevent their good education in *England*, or for any other cause, shall hereafter be sent or go beyond seas, without licence of the king's majesty, or six of his honourable privy council (whereof the principal secretary to be one) under their hands and seals, that then all and every such child and children

children so sent, or which shall so go beyond the seas, shall take no benefit by any gift, conveyance, descent, devise or otherwise, of or to any lands, tenements, hereditaments, leases, goods or chattels, until he or they being of the age of eighteen years, or above, take the oath mentioned in an act of parliament made this present session, intituled, An act for the better discovering and repressing of popish recusants, before some justice of peace of the county, liberty or limit where such parent of such children as shall be so sent, did and shall inhabit or dwell; (2) and that in the mean time the next of his or her kin, which shall be no popish recusant, shall have and enjoy the said lands, tenements, hereditaments, leases, goods and chattels so given, conveyed, descended or devised, until such time as the person so sent or gone beyond the seas, shall conform him or her self, and take the aforesaid oath, and receive the sacrament of the Lord's supper: (3) and after such oath taken, and conforming of himself, and receiving the sacrament of the supper of the Lord, he or they which have so received the profits of the said land, tenements, hereditaments, goods and chattles, or any of them, shall make account of the profits so received, and in reasonable time make payment thereof, and restore the value of the said goods to such person as shall so conform him or herself as aforesaid: (4) and that all such persons as shall send the said child or children over seas, without licence, as aforesaid (unless the said child or children be merchants, or their apprentices or factors, mariners or soldiers) shall forfeit an hundred pounds, to be divided, had and recovered in three equal parts; whereof the one third part shall be to the king, his heirs and successors; the other third part to such as shall sue for the same, and the other part to the poor of such parish where such offender doth inhabit or remain, by action of debt, bill, plaint or information, in any the king's majesty's courts of record, wherein no essoin, protection or wager of law shall be admitted or allowed.

The forfeiture of him who sendeth his child beyond the sea.

1 Jac. 2, c. 4.

3 Car. 1, c. 2.

altered by

11 & 12 W. 3.

c. 4, s. 6.

Sec. 17. "And for that many subjects of this realm, being neither merchants, nor their factors, nor apprentices, soldiers nor mariners, are of late gone beyond the seas without licence, and are not as yet returned, (2) be it further enacted by the authority of this present parliament, That if any of the said persons so gone beyond the seas without licence, which are not yet returned, shall not within six months next after their return into this realm, then being of the age of eighteen years, or more, take the oath above specified before some justice of peace of the county, liberty or limit where such person shall inhabit or remain, that then every such offender shall take no benefit by any gift, conveyance, descent, devise or otherwise, of, or to any lands, tenements, hereditaments, goods or chattles, until he or they, being of the said age of eighteen years, or above, take the said oath: (3) and that likewise in the mean time the next of kin to the person so offending, which shall be no popish recusant, shall have and enjoy the said lands, tenements, hereditaments, goods and chattels so given, conveyed, descended or devised, until such time as the person so offending shall conform himself, and take the aforesaid oath, and receive the said sacrament of the Lord's supper: (4) and after such

The forfeiture of the persons gone beyond sea.

conforming, taking of the said oath, and receiving of the said sacrament, he or they that shall have so received the profits of the said lands, tenements, hereditaments, goods and chattles, shall make account of the profits so received, and in reasonable time make payment thereof, and of the value of such goods and chattles, to such person as shall so conform him or herself, as aforesaid.

A recusant shall not present to a benefice, nor grant an advowson.

Enlarged by 1 W. & M. Sess. 1, c. 26. and 12 Annæ, Stat. 2, c. 14.

Seet. 18. " And be it further enacted by the authority of this present parliament, That every person or persons that is or shall be a popish recusant convict, during the time that he shall be or remain a recusant, shall from and after the end of this present session of parliament, be utterly disabled to present to any benefice with cure or without cure, prebend, or any other ecclesiastical living, or to collate or nominate to any free-school, hospital or donative whatsoever, and from the beginning of this present session of parliament, shall likewise be disabled to grant any avoidance to Stat. 2, c. 14. any benefice, prebend, or other ecclesiastical living.

The chancellor and scholars of Oxford shall present to a recusant's benefice.

Jones 17.

Seet. 19. " And that the chancellor and scholars of the university of Oxford, so often as any of them shall be void, shall have the presentation, nomination, collation, donation of and to every such benefice, prebend or ecclesiastical living, school, hospital and donative, set, lying and being in the counties of Oxford, Kent, Middlesex, Sussex, Surry, Hampshire, Berkshire, Buckinghamshire, Gloucestershire, Worcestershire, Staffordshire, Warwickshire, Wiltshire, Somersetshire, Devonshire, Cornwall, Dorsetshire, Herefordshire, Northamptonshire, Pembrokehire, Caermarthenshire, Brecknockshire, Monmouthshire, Cardiganshire, Montgomeryshire, the city of London, and in every city and town, being a county of itself, lying and being within any of the limits or precincts of any of the counties aforesaid, or in, or within any of them, as shall happen to be void during such time as the patron thereof shall be and remain a recusant convict, as aforesaid.

The chancellor and scholars of Cambridge.

Seet. 20. " And that the chancellor and scholars of the university of Cambridge, shall have the presentation, nomination, collation and donation of and to every such benefice, prebend or ecclesiastical living, school, hospital and donative, set, lying and being in the counties of Essex, Hertfordshire, Bedfordshire, Cambridgeshire, Huntingdonshire, Suffolk, Norfolk, Lincolnshire, Rutlandshire, Leicestershire, Darbyshire, Nottinghamshire, Shropshire, Cheshire, Lancashire, Yorkshire, the county of Durham, Northumberland, Cumberland, Westmerland, Radnorshire, Denbshire, Flintshire, Caernarvonshire, Angleseyshire, Merionethshire, Glamorganshire, and in every city and town, being a county of itself, lying within any of the limits or precincts of any of the counties last before-mentioned, or in or within any of them, as shall happen to be void during such time as the patron thereof shall be and remain a recusant convict, as aforesaid.

None shall be presented who hath another benefice.

Seet. 21. " Provided, that neither of the said chancellors nor scholars of either of the said universities, shall present or nominate to any benefice with cure, prebend or other ecclesiastical living, any such person as shall then have any other benefice with cure of souls: and if any such presentation or nomination shall be had or made of any such person so beneficed,

the said presentation or nomination shall be utterly void; any thing in this act to the contrary notwithstanding.

Sec. 22. "Moreover, because recusants convicted are not thought meet to be executors or administrators to any person or persons whatsoever, nor to have the education of their own children, much less of the children of any other of the king's subjects, nor to have the marriage of them, (2) be it therefore enacted by the authority aforesaid, That such recusants convicted, or which shall be convicted at the time of the death of any testator, or at the time of the granting of any administration, shall be disabled to be executor or administrator by force of any testament hereafter to be made, or letters of administration hereafter to be granted, nor shall have the custody of any child, as guardian in chivalry, guardian in socage, or guardian in nature of any lands, tenements or hereditaments being freehold or copyhold, but shall be adjudged disabled to have any such wardship or custody of any such child, or of their lands, tenements or hereditaments, being freehold or copyhold, as aforesaid.

A recusant shall not be executor or administrator.

A recusant shall be no guardian.

Sec. 23. "And that for the better education and preservation of the said children, and of their estates, the next of kin to such child or children, to whom the said lands, tenements or hereditaments of such child or children cannot lawfully descend, who shall usually resort to some church or chapel, and there hear divine service, and receive the holy sacrament of the Lord's supper thrice in the year next before, according to the laws of this realm, shall have the custody and education of the same child, and of his lands, and tenements, being holden in knights-service, until the full age of the said ward of one and twenty years, and of his said lands, tenements and hereditaments being holden in socage, as a guardian in socage; (2) and of the said lands, tenements and hereditaments holden by copy of court-roll of any manor, so long as the custom of the said manor shall permit and allow the same, (3) and in every of the said cases shall yield an account of the profits thereof to the said ward, as the case shall require.

Who shall have the wardship.

Sec. 24. "And that if at any time hereafter, any of the wards of the king's majesty, or of any other, shall be granted or sold to any popish recusant convicted, such grant or sale shall be utterly void and of none effect.

The king's wards.

Sec. 25. "And be it further enacted by the authority of this present parliament, That no person or persons shall bring from beyond the seas, nor shall print, sell or buy any popish primers, ladies-psalters, manuals, rosaries, popish catechisms, missals, breviaries, portals, legends, and lives of saints, containing superstitious matter, printed or written in any language whatsoever, nor any other superstitious books printed or written in the English tongue; (2) upon pain of forfeiture or forty shillings for every such book; one third part thereof to be to the king's majesty, his heirs, and successors; one other third part to him that will sue for the same; and the other third part to the poor of the parish where such book or books shall be found, to be recovered by action of debt, bill, plaint or information, in any of the king's majesty's courts of record wherein no essoin, protection or wager of law shall be admitted or allowed, and the said books to be burned.

Popish books.

Justices may
search for
books print-
ed, &c.

Seſſ. 26. “ And that it ſhall be lawful for any two juſtices of peace within the limits of their juriſdiction or authority, and to all mayors, bailiffs and chief officers of cities and towns corporate in their liberties from time to time, to ſearch the houſes and lodgings of every popiſh recusant convict, or of every perſon whoſe wife is or ſhall be a popiſh recusant convict, for popiſh books and relicks of popery: (2) and that if any altar, pix, beads, pictures, or ſuch like popiſh relicks, or any popiſh book or books, ſhall be found in their or any of their cuſtody, as in the opinion of the ſaid juſtices, mayor, bailiff, or chief officer, as aforeſaid, ſhall be thought unmeet for ſuch recusant, as aforeſaid, to have or uſe the ſame, ſhall be preſently defaced and burnt, if it be meet to be burned: (3) and if it be a crucifix, or other relick of any price, the ſame to be defaced at the general quarter-ſeſſions of the peace, in the county where the ſame ſhall be found, and the ſame ſo defaced to be reſtored to the owner again.

A crucifix de-
faced.

A recusant's
armour.

Seſſ. 27. “ And be it alſo enacted by the authority aforeſaid, That all ſuch armour, gunpowder and munition, of whatſoever kinds, as any popiſh recusant convict within this realm of *England*, hath or ſhall have in his houſe or houſes, or elſewhere, or in the hands or poſſeſſion of any other, at his or their diſpoſition, ſhall be taken from ſuch popiſh recusants or others which have or ſhall have the ſame to the uſe of ſuch popiſh recusant, by warrant of four juſtices of peace at their general or quarter-ſeſſions, to be holden in the ſame county where ſuch popiſh recusant ſhall be reſident (other than ſuch neceſſary weapons, as ſhall be thought fit by the ſaid four juſtices of peace to remain and be allowed for the defence of the perſon or perſons of ſuch recusant, or for the defence of his, her or their houſe or houſes) and that the ſaid armour and munition ſo taken, ſhall be kept and maintained at the coſts of ſuch recusants, in ſuch places as the ſaid four juſtices of peace at their ſaid ſeſſions of the peace ſhall ſet down and appoint.

The forfeiture
of a recusant
not delivering
his armour.

Seſſ. 28. “ And be it further enacted by the authority aforeſaid, That if any ſuch recusant having, or which ſhall have any ſuch armour, gunpowder and munition, or any of them, or if any other perſon or perſons which ſhall have any ſuch armour, gunpowder and munition, or any of them, to the uſe of any ſuch recusant, ſhall reſuſe to declare or manifeſt unto the ſaid juſtices of the peace, or any of them, what armour he, ſhe or they have, or ſhall have, or ſhall let, hinder or diſturb the delivery thereof, to any of the ſaid juſtices, or to any other perſon or perſons authorized by their warrant to take and ſeize the ſame, then every ſuch perſon ſo offending contrary to this ſtatute in this behalf, ſhall forfeit and loſe to the king's majeſty, his heirs and ſucceſſors, his and their ſaid armour, gunpowder and munition, and ſhall alſo be imprifoned by warrant of or from any juſtices of peace of ſuch county, by the ſpace of three months, without bail or mainprize.

A recusant
ſhall maintain
his armour.

Seſſ. 29. “ And yet nevertheless, be it enacted by the authority aforeſaid, That notwithstanding the taking away of ſuch armour, gunpowder and munition, the ſaid popiſh recusant ſhall and may be charged with the maintaining of the ſame, and with the buying, providing and maintaining

of horse, and other armour and munition, in such sort as other his majesty's subjects from time to time shall be appointed and commanded, according to their several abilities and qualities, and that the said armour and munition, at the charge of such popish recusant for them, and as their own provision of armour and munition, shall be shewed at every muster, shew or use of armour to be had or made within the said county.

Sett. 30. "Provided always, that neither this act, nor any thing therein contained, shall extend to take away or abridge the authority or jurisdiction of the ecclesiastical censures, for any cause or matter, but that the commissioners of his majesty, his heirs and successors, in causes ecclesiastical, for the time being, archbishops, bishops and other ecclesiastical judges may do, and proceed as before the making of this act they lawfully did or might have done; any thing in this act to the contrary in any wise notwithstanding."

STAT. 7 Jac. 1, c. 6, [A. D. 1609, intituled] "An act for administering the oath of allegiance, and reformation of married women recusants."

Sett. 28. "And be it further enacted, That if any married woman (being lawfully convicted as a popish recusant, for not coming to church) shall not within three months next after such conviction, conform herself, and repair to the church, and receive the sacrament of the Lord's supper, according to the former laws and statutes made and provided in that behalf touching recusants, That then she shall be committed to prison by one of the privy council of your highness, your heirs or successors, or by the bishop of the diocese, if she be a baroness, or if she be under that degree, by two justices of the peace of the same county, whereof one to be of the *quorum*, there to remain without bail or mainprize, until she shall conform herself and come to church, and receive the sacrament of the Lord's supper, unless the husband of such wife shall pay to the king's majesty, his heirs or successors, for the offence of the said wife, for every month ten pounds of lawful money of *England*, or else the third part (in three parts to be divided) of all his land and tenements, at the choice of the husband whose wife is so convicted, as aforesaid, for and during so long time as she remaining a recusant convicted, shall continue out of prison, during which time (and no longer) she may be at liberty.

STAT. 3 Car. 1, c. 2, [A. D. 1627, intituled] "An act to restrain the passing or sending of any to be popishly-bred beyond the seas."

Forasmuch as divers ill affected persons to the true religion established within this realm, have sent their children into foreign parts to be bred up in popery, notwithstanding the restraint thereof by the statute made in the first year of the reign of our late sovereign lord king *James* of famous memory, be it enacted, That the said statute shall be put in due execution; (2) and be it further enacted by the king's most excellent majesty, and the lords spiritual and temporal, and commons in this present parliament

The penalty of a married woman recusant, that shall not come to the church and receive the sacrament.

A restraint of passage or sending any person beyond the seas to be popishly-bred.
1 Jac. 1, c. 4.
He that goeth himself, or

sends any other beyond the seas to be trained up in popery, &c. shall be disabled to sue, &c. and shall lose all his goods, and shall forfeit all his lands, &c. for life.

parliament assembled, and by the authority of the same, That in case any person or persons under the obedience of the king, his heirs and successors, at any time after the end of this session of parliament, shall pass or go, or shall convey or send, or cause to be sent or conveyed, any child or other person, out of any of the king's dominions, into any the parts beyond the seas, out of the king's obedience, to the intent and purpose to enter into, or be resident or trained up in any priory, abbey, nunnery, popish university, college or school, or house of jesuits, priests, or in any private popish family, and shall be there by any jesuit, seminary priest, friar, monk, or other popish person, instructed, persuaded or strengthened in the popish religion, in any sort to profess the same, or shall convey or send, or cause to be conveyed or sent by the hands or means of any person whatsoever, any sum or sums of money, or other thing, for or towards the maintenance of any child, or other person already gone or sent, or to go, or to be sent, and trained and instructed, as is aforesaid, or under the name or colour of any charity, benevolence or alms, towards the relief of any priory, abbey, nunnery, college, school, or any religious house whatsoever: every person so sending, conveying, or causing to be sent and conveyed, as well any such child or other person, as any sum or sums of money, or other thing, and every person passing or being sent beyond the seas, being thereof lawfully convicted, in or upon any information, presentment or indictment, as is aforesaid, shall be disabled from thenceforth to sue or use any action, bill, plaint, or information, in course of law, or to prosecute any suit in any court of equity, or to be committee of any ward, or executor or administrator to any person, or capable of any legacy or deed of gift, or to bear any office within the realm; (3) and shall lose and forfeit all his goods and chattels; and shall forfeit all his lands, tenements and hereditaments, rents, annuities, offices and estates of freehold, for and during his natural life.

A convert shall not incur the penalties aforesaid.

27 El. c. 2.

Sett. 2. " Provided always, That no person sent or conveyed, as aforesaid, that shall within six months after his return into this realm, conform himself unto the present religion established in this church of *England*, and receive the sacrament of the Lord's supper, according to the statutes made concerning conformity in other cases required from popish recusants, shall incur any the penalties aforesaid.

Sett. 3. " And it is enacted, That all and every of the said offences against this statute may be enquired, heard and determined before the justices of the king's bench, or justices of assize, or gaol-delivery, or of *Oyer and Terminer*, of such counties where the offenders did last dwell or abide, or whence they departed out of this kingdom, or where they were taken.

Sett. 4. " Provided also, That if any person or child, so passing, or sent, or now being beyond the seas, shall after his return into this realm, conform himself to the present religion established in the church of *England*, and receive the sacrament of the Lord his supper, according to the statutes made for or concerning conformity, in other cases required from popish recusants, for and during such time as he or she shall so continue in such conformity

conformity and obedience, according to the true intent and meaning of the said laws and statutes, shall have his or her lands restored to them again."

STAT. 25 Car. 2, c. 2. See this act under title *Oaths*, page 208.

STAT. 30 Car. 2, st. 2, c. 1. See this act under title *Oaths*, page 214.

STAT. 1 Will. & Ma c. 9, [A. D. 1688, intituled] "An act for the removing papists, and reputed papists from the cities of *London* and *Westminster*, and ten miles distance from the same.

"Whereas the great numbers of papists resorting to the cities of *London* and *Westminster*, are, and for a long time have been found dangerous to the peace and safety of this kingdom: for the better preservation of the common safety, and avoiding their mischievous practices and designs: Sect. 2. "Be it enacted by the king's and queen's most excellent majesties, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That for the better discovering and removing all papists and reputed papists out of the said cities and ten miles of the same, it shall and may be lawful, and it is hereby required, that the lord mayor of *London* for the time being, and every justice of the peace of the city of *London*, and for the city and liberties of *Westminster*, and borough of *Southwark*, and of the counties of *Middlesex*, *Surrey*, *Kent*, and *Suffex*, within their respective counties, cities, boroughs, and limits, do from time to time cause to be arrested and brought before him every person or persons, not being a merchant foreigner within the said cities, or within ten miles of the same, as are or are reputed to be papists, and tender unto him the declaration mentioned in the statute made in the thirtieth year of king *Charles* the Second, intituled, *An act for the more effectual preserving the king's person and government, by disabling papists from sitting in either house of parliament*: and in case such person upon such tender refuse audibly and solemnly to repeat, make, and subscribe the said declaration, and shall after such refusal remain, continue, or be within the said city or cities, or ten miles distance from the same, that in every such case he or she shall forfeit and suffer as a popish recusant convict by the laws already established shall or may forfeit or suffer.

Lord mayor, &c. may tender declaration of 30 Car. 2, to papists or so reputed.
Suffex mislaken for Essex, infra, f. 1, c. 17.
30 Car. 2, stat. 2, c. 1.
Penalty for refusal.
Justices of peace shall certify subscribers and refusers into the king's bench, &c.
Penalty upon person certified to have refused, if he take not the

Sect. 3. "And it is hereby further enacted, That every justice of peace shall and do certify all and every subscription before him by virtue of this act taken, and likewise the names of all and every person refusing to repeat, take, make, or subscribe, as aforesaid, upon tender, under the hand and seal of the said justice, into the court of king's bench, the next term, or else at the next quarter-sessions that shall be of or for the county or place where such taking, subscribing, or refusal shall happen: and if the said person, so refusing and certified, shall not within the next term or sessions after such refusal appear in the court of king's bench or sessions

oaths next
term, &c.

where such certificate shall be returned, and in open court audibly and solemnly repeat, take, make, and subscribe the declaration aforesaid, and indorse or enter his so doing, upon the certificate so returned, shall be, from the time of such his neglect or refusal, taken, esteemed, and adjudged a popish recusant convict, and as such to forfeit and be proceeded against.

Tradesmen,
&c. excepted,
if they certify
their names,
&c. at the ses-
sions.

Seft. 4. " Provided always, That this act shall not extend to such person or persons as now use any trade, mystery, or manual occupation within the said liberties of *London*, and *Westminster*, or within ten miles of the same; nor to such as within six months before the thirteenth day of *February*, one thousand six hundred eighty-eight, had their dwelling or places of abode within the said cities, or ten miles compass of the same, not having any dwelling or place of abode elsewhere, so as he or they before the first day of *August*, one thousand six hundred eighty-nine, do certify his or their names, additions, and places of abode, at the sessions of the peace to be held for the said respective cities, counties, or places: and the clerk of the peace shall not take or receive above two-pence for the entry, of the name, addition, and place of abode of any one person.

Ambassadors
servants ex-
cepted.

Seft. 5. " Provided that nothing in this act shall relate to, or have any effect upon, any foreigner that is or shall be a menial servant to any ambassador, or public agent.

Queen dow-
ager's servants
excepted.

Seft. 6. " Provided, That nothing in this act shall relate to, or have any effect upon, any person being a natural born subject of the king of *Portugal*, who now is or hereafter shall be a sworn servant to the queen dowager, nor to any other servants being natural-born subjects of their majesties, as her majesty the queen dowager shall under her hand and seal from time to time for that purpose be pleased to nominate, the said servants so nominated not exceeding the number of thirty at any one time, so as none of the said servants, being natural-born subjects of their majesties, be a jesuit, priest, monk, or fryar; any law or statute to the contrary notwithstanding."

STAT. 1 *Will. & Ma. c. 15*, [*A. D. 1688*, intituled] " An act for the better securing the government by disarming papists and reputed papists."

" For the better securing of the government against papists and reputed papists:

Two justices
of peace may
tender decla-
ration of 30
Car. 2, to pa-
pists, &c.
For Scotland,
see 1 Geo. 1,
stat. 2, c. 20,
s. 16.
30 Car. 2,
stat. 2, c. 1.

Seft. 2. " Be it enacted by the king's and queen's most excellent majesties, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by authority of the same, That it shall and may be lawful for any two or more justices of the peace, who shall know or suspect any person to be a papist, or shall be informed that any person is or is suspected to be a papist, to tender, and they are hereby authorized and required forthwith to tender to such person so known or suspected to be a papist, the declaration set down and expressed in an act of parliament made in the thirtieth year of the reign of the late king *Charles* the Second, intituled, *An act for the*

more

more effectual preserving the king's person and government, by disabling papists from sitting in either house of parliament, to be by him made, repeated, and subscribed: and if such person so required shall refuse to make, repeat, and subscribe the said declaration, or shall not make, repeat, and subscribe the said declaration, or shall refuse or forbear to appear before the said justices, for the making, repeating, and subscribing the said declaration, upon notice to him given or left at his usual place of abode, by any person authorized in that behalf, by warrant under the hands and seals of the said two justices, such person from thenceforth shall be taken to be, and is hereby declared to be liable and subject to all and every the penalties, forfeitures, and disabilities hereafter in this act mentioned.

Sett. 3. " And be it hereby further enacted, That the said justices of peace shall certify the name, surname, and usual place of abode of every person, who being required, shall refuse or neglect to make, repeat, and subscribe the said declaration, or to appear before them for the making, repeating, and subscribing the said declaration; as also of every person, who shall make, repeat, and subscribe the said declaration at the next general quarter-sessions to be holden for the shire, riding, division, or liberty, for which they shall be justices of the peace, to be there recorded by the clerk of the peace, or town-clerk, and kept amongst the records of the said sessions.

Sett. 4. " And for the better securing their majesties persons and government, Be it further enacted and declared, That no papist or reputed papist, so refusing or making default, as aforesaid, shall or may have or keep in his house, or elsewhere, or in the possession of any other person to his use, or at his disposition, any arms, weapons, gunpowder, or ammunition (other than such necessary weapons, as shall be allowed to him by order of the justices of the peace, at their general quarter-sessions, for the defence of his house or person) And that any two or more justices of the peace, from time to time, by warrant under their hands and seals, may authorize and empower any person or persons in the day-time, with the assistance of the constable or his deputy, or the tythingman, or headborough, where the search shall be (who are hereby required to be aiding and assisting herein) to search for all arms, weapons, gunpowder, or ammunition which shall be in the house, custody, or possession of any such papist or reputed papist, and seize the same for the use of their majesties, and their successors, which said justices of the peace shall from time to time, at the next general quarter sessions to be held for the county, riding, division, or liberty, where such seizure shall be made, deliver the said arms, weapons, gunpowder, and ammunition, in open court, for the use aforesaid.

Sett. 5. " And be it further enacted, That every papist or reputed papist, who shall not within the space of ten days after such refusal, or making default, as aforesaid, discover and deliver, or cause to be delivered to some of their majesties justices of the peace, all arms, weapons, gunpowder, or ammunition whatsoever, which he shall have in his house or elsewhere, or which shall be in the possession of any person to his use, or at

Justices of peace shall certify the subscribers and refusers to the sessions.

Refuser shall keep no arms.

Two justices of peace may seize arms.

Penalty upon refuser for not discovering or hindring the search for his arms.

his disposition, or shall hinder or disturb any person or persons authorized by warrant under the hands and seals of any two justices of the peace, to search for and seize the same, that every such person so offending, contrary to the statute in this behalf made, shall be committed to the common gaol of the county or place, where he shall commit such offence, by warrant under the hands and seals of any two justices of the peace, there to remain, without bail or mainprize, for the space of three months, and shall also forfeit and lose the said arms, and pay treble the value of them to the use of their majesties, and their successors, to be appraised by the justices of the peace, at the next general quarter-sessions to be held for the said county, riding, or division, to their majesties and their successors.

Penalty upon
concealers of
arms.

Sett. 6. “ And be it further enacted, That every person who shall conceal, or be privy, or aiding, or assisting to the concealing, or who knowing thereof, shall not discover or declare to some of their majesties justices of the peace, the arms, weapons, gunpowder, or ammunition of any person so refusing, or making default as aforesaid, or shall hinder or disturb any person or persons authorized, as aforesaid, in searching for, taking, and seizing the same, shall be committed to the common gaol of the county or place where he shall commit such offence, by warrant under the hands and seals of any two justices of the peace, there to remain without bail or mainprize for the space of three months; and shall also forfeit and lose treble the value of the said arms to their majesties and their successors.

Reward to
discoverer of
refusers arms.

Sett. 7. “ And be it further enacted, That if any person or persons shall discover any concealed arms, weapons, ammunition, or gunpowder, belonging to any refusing or making default, as aforesaid, so as the same may be seized, as aforesaid, for the use of their majesties and their successors, the justices of the peace, upon delivery of the same at the general quarter-sessions, as aforesaid, shall have power, and they are hereby required, as a reward for such a discovery, by order of sessions, to allow to him or them a sum of money, amounting to the full value of the arms, weapons, ammunition, or gunpowder so discovered; the said sum to be assessed by the judgment of the said justices at their said sessions, and to be levied by distress and sale of the goods of the person offending against this act; rendring the overplus which shall arise by such sale, above the said sum so allowed, and above the necessary charges of taking such distress, to the owner.

Refusers sub-
scribing the
declaration,
penalty dis-
charged.

Sett. 8. “ Provided always, That if any person, who shall have refused or made default, as aforesaid, shall desire to submit and conform, and for that purpose shall present himself before the justices of peace at the general quarter-sessions to be holden for the county, riding, division, or liberty where his refusal, or making default, as aforesaid, shall be certified, as aforesaid, and shall there in open court make, repeat, and subscribe the said declaration contained in the said act made in the said thirtieth year of the reign of the said late king *Charles* the second, and take the several oaths contained in an act made in this present parliament,

Supra c. 1.

intituled, *An act for removing and preventing all questions and disputes concerning*

cerning the assembling and sitting of this present parliament; he shall from thenceforth be discharged of and from all disabilities and forfeitures which he might or should be liable to for the future, by reason of his refusal or default, as aforesaid.

SECT. 9. " And be it further enacted, That no papist or reputed papist, so refusing or making default, as aforesaid, at any time after the fifteenth day of *May* in the year of our Lord one thousand six hundred eighty nine, shall or may have or keep in his own possession, or in the possession of any other person to his use, or at his disposition, any horse or horses which shall be above the value of five pounds, to be sold; and that any two or more justices of the peace from time to time, by warrant under their hands and seals, may and shall authorize any person or persons, with the assistance of the constable or his deputy, or the tythingman, or headborough, when the search shall be (who are hereby required to be aiding and assisting herein) to search for and seize, for the use of their majesties and their successors, all such horses, which horses are hereby declared to be forfeited to their majesties and their successors. Papists horses, above 5 l. value forfeited.

SECT. 10. " And be it further enacted, That if any person shall conceal, or be aiding or assisting in the concealing any such horse or horses belonging to any papist or reputed papist, so refusing or making default as aforesaid, after the said fifteenth day of *May*, such person shall be committed to prison by such warrant, as aforesaid, there to remain without bail or mainprize by the space of three months, and shall also forfeit and lose to their majesties and their successors treble the value of such horse or horses, which value is to be settled as aforesaid." Penalty upon concealer of papists horses.

STAT. 1 *Will. & M. c.* 18. See this act under title *Dissenters*.

STAT. 1 *Will. & M. c.* 26. [*A. D.* 1688, intituled] " An act to vest in the two universities the presentations of benefices belonging to papists.

" Whereas in and by a certain clause mentioned in one act of parliament made in the third year of the reign of king *James* the first, intituled, *An act to prevent and avoid dangers which may grow by popish recusants*, it is enacted, That every person or persons that is or shall be a popish recusant convicted, during the time that he shall be or remain a recusant, shall, from and after the end of that present session of parliament, be utterly disabled to present to any benefice with cure, or without cure, prebend, or any other ecclesiastical living, or to collate or nominate to any free-school, hospital, or donative whatsoever, and from the beginning of the said parliament shall likewise be disabled to grant any avoidance to any benefice, prebend, or other ecclesiastical living: 3 Jac. 1, c. 5.

SECT. 2. " Be it enacted by the king and queen's most excellent majesties, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by authority of the same, That every person who shall refuse or neglect to make, repeat, and subscribe the declaration mentioned in one act of this present parliament, Persons refusing declaration disabled to present, &c.

Ante c. 15.

Universities
shall present,
&c.Trustees dis-
abled.3 Jac. 1, c. 5.
*Enlarged as to
papists not con-
vict*, by 12
Annæ, stat. 2,
c. 14, s. 1.Penalty upon
trustees pre-
senting with-
out notice.

parliament, intituled, *An act for the better securing the government by disarming papists and reputed papists*, when the same shall be tendred to such person by any two or more justices of the peace, as in the said act is enacted, or who shall upon notice given, as in the said act is directed, refuse or forbear to appear before them for the making, repeating, and subscribing thereof, and shall thereupon have his name, surname, and usual place of abode certified and recorded at the general quarter-sessions to be holden for the shire, riding, division, or liberty, for which such two justices shall be justices of the peace, by the clerk of the peace, or town clerk, as in the said act is appointed; every such person so recorded shall be, from and after the time of such record made, adjudged, taken, and esteemed disabled to make such presentation, collation, nomination, donation, or grant of any avoidance of any benefice, prebend, or ecclesiastical living, as fully and amply as if such person were a popish recusant convict by the laws or statutes of this realm; any law, statute, or usage to the contrary notwithstanding. And that the chancellor and scholars of the university of Oxford, and the chancellor and scholars of the university of Cambridge, by what name or names soever they, or either of them, are incorporated, shall respectively have the presentation, nomination, collation, and donation of and to every such benefice, prebend, or ecclesiastical living, school, hospital, and donative, set, lying, and being in the respective counties, cities, and other the places and limits in the said act of the third of king James mentioned, as in and by the said act is directed and appointed, so often as any of them shall become void, according to the limitations, directions, and provisions in that behalf limited, enacted, and provided.

SECT. 3. “ And be it further enacted by the authority aforesaid, That where any person or persons are or shall be seized or possessed of any advowson, right of presentation, collation, or nomination to any such ecclesiastical living, free-school, or hospital as aforesaid, in trust for any papist or popish recusant, who shall be convicted or disabled, according to the true intent and meaning of the said statute, made in the third year of the reign of the said king James the first, or by this present act, every such person and persons so seized and possessed in trust for any papist or popish recusant convict or disabled, shall be and are hereby adjudged to be disabled to present, nominate, or collate to any such ecclesiastical living, free-school, or hospital, or to grant any avoidance thereof, and their and every of their presentations, nominations, collations, and grants, shall be null and void to all intents and purposes whatsoever; and the chancellors and scholars of the said respective universities as aforesaid, upon every avoidance, shall have the presentations, nominations, and collations, to such ecclesiastical livings, free-schools, and hospitals, in such manner as they should have the same, in case such recusant convict or disabled were seized or possessed thereof.

SECT. 4. “ And in case any trustee or trustees, or mortgagee, or grantee of any avoidance, hereafter present, nominate, or collate, or cause to be presented, nominated, or collated any person to any such ecclesiastical living,

living, free-school, or hospital, whereof the trust shall be for any recusant convict or disabled, without giving notice of the avoidance in writing to the vice-chancellor for the time being of the university, to whom the presentation, nomination, or collation shall belong, according to the true intent of this act, within three months after the avoidance shall happen, such trustee or trustees, mortgagees, or grantees, shall forfeit and pay the sum of five hundred pounds to the said respective chancellors and scholars of either of the said universities, to whom such presentation, nomination, or collation shall belong, according to the true intent of this present act, to be recovered in any of their majesties courts of record, by action of debt, bill, plaint, or information, wherein no essoin, protection, or wager of law shall be allowed.

Seet. 5. “ Provided always, That the said chancellors and scholars of either of the said universities shall not present or nominate to any benefice with cure, prebend, or other ecclesiastical living, any person as shall then have any other benefice with cure of souls; and if any such presentation shall be had or made of any such person so beneficed, the said presentation shall be utterly void; any thing in this act to the contrary notwithstanding. ^{Presentation of person beneficed, void.}

Seet. 6. “ Provided, That if any person so presented or nominated to any benefice with cure shall be absent from the same above the space of sixty days in any one year, that in such case the said benefice shall become void. ^{What absence makes living void.}

Seet. 7. “ Provided nevertheless, That if any such person shall present himself before the justices of the peace at the general quarter-sessions to be holden for the county, riding, division, or liberty where his name was recorded, and shall there in open court make, repeat and subscribe the said declaration, and take the several oaths contained in one act of this present parliament, intituled, *An act for the abrogating of the oaths of supremacy and allegiance, and appointing other oaths*, he shall from thenceforth be discharged of and from the said disability, and be enabled to make such presentation, collation, nomination, and donation, and grant of any avoidance to any benefice, prebend, or ecclesiastical living, school, or hospital, as if this act had not been made.” ^{Taking the oaths purges the disability.}

STAT. 11 & 12 Will. 3, c. 4. [*A. D. 1700, intituled*] “ An act for the further preventing the growth of popery.”

“ Whereas there has been of late a much greater resort into this kingdom than formerly of popish bishops, priests, and jesuits, and they do very openly, and in an insolent manner, affront the laws, and daily endeavour to pervert his majesty's natural born subjects, which has been occasioned by neglect of the due execution of the laws already in force: for preventing the further growth of popery, and of such treasonable and execrable designs and conspiracies against his majesty's person and government, and the established religion, as have lately, as well as frequently heretofore, been brought to light, and happily defeated by the wonderful providence of

of God: Be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by authority of the same, That from and after the five and twentieth day of *March*, one thousand seven hundred, all and every person and persons, who shall apprehend and take one or more popish bishop, priest, or jesuit, and prosecute him or them so apprehended and taken, until he or they be convicted of saying mass, or of exercising any other part of the office or function of a popish bishop or priest within these realms, shall have and receive from the sheriff or sheriffs of the county where such conviction shall be made (without paying any fee for the same) for every such offender, so convicted, the sum of one hundred pounds within four months after such conviction, and demand thereof made, by rendering a certificate to the said sheriff or sheriffs, under the hand or hands of the judge or justices before whom such conviction shall be made, certifying the conviction of such popish bishop, priest, or jesuit, and also that such popish bishop, priest, or jesuit, popish bishops, priests, or jesuits, was or were taken by the person or persons claiming the said reward: And in case any dispute shall happen to arise between the persons so apprehending any popish bishop, priest, or jesuit, touching their right and title to the said reward, that then the said judge or justices, so respectively certifying as aforesaid, shall in and by their said certificate direct and appoint the said reward to be paid unto and amongst the parties claiming the same, in such share and proportion as to the said judge or justices shall seem just and reasonable; and if it shall happen any such sheriff or sheriffs shall die, or be removed before the expiration of four months after such conviction and demand made of the said reward (not being paid, as aforesaid) that then the next succeeding sheriff or sheriffs of the said county shall pay the same, within two months after demand, and certificate brought, as aforesaid; and if default of payment of the said sum or sums of money shall happen to be made by any sheriff or sheriffs, such sheriff or sheriffs, so making default, shall forfeit to the person or persons to whom such money is due, as aforesaid, two hundred pounds, to be recovered by him or them, or his or their executors or administrators, in any of his majesty's courts of record at *Westminster*, by action of debt, bill, plaint, or information, wherein but one imparlance, and no essoin, protection, or wager of law shall be allowed, with full costs of suit by him or them expended in the recovery of the same.

Sec. 2. " And it is hereby further enacted, That all sheriffs, their successors, executors, or administrators, upon producing such respective certificates, or a duplicate or duplicates thereof, shall have the monies contained in such certificate paid to them by the lord treasurer, or commissioners of his majesty's treasury for the time being, out of the revenue of the crown.

100l. reward for taking popish bishop, priest, or jesuit, &c. convicted of saying mass, &c.

to be paid by the sheriff, &c.

In case of dispute about sharing the reward, judge to proportion the same.

Penalty on sheriff making default of payment.

Sheriffs to be repaid by the Treasury.

Penalty on popish bishop, priest, &c.

Sec. 3. " And for a further remedy against the growth of popery, over and beyond the good laws already made: be it further enacted by the authority aforesaid, That if any popish bishop, priest, or jesuit whatsoever, shall say mass, or exercise any other part of the office or function of a popish

a popish bishop or priest within these realms, or the dominions thereunto saying mass, belonging, or if any papist, or person making profession of the popish religion, shall keep school, or take upon themselves the education, or government, or boarding of youth in any place within this realm, or the dominions thereto belonging, such person or persons, being thereof lawfully convicted, that then every such person shall on such conviction be adjudged to perpetual imprisonment, in such place or places within this kingdom, as the king, by advice of his privy council, shall appoint.

Stat. 4. " And be it also further enacted by the authority aforesaid, That from and after the nine and twentieth day of *September*, which shall be in the year of our Lord one thousand seven hundred, if any person educated in the popish religion, or professing the same, shall not within six months after he or she shall attain the age of eighteen years, take the oaths of allegiance and supremacy, and also subscribe the declaration set down and expressed in an act of parliament made in the thirtieth year of the reign of the late king *Charles the Second*, intituled, *An act for the more effectual preserving the king's person and government, by disabling papists from sitting in either house of parliament*, to be by him or her made, repeated, and subscribed, in the courts of chancery or king's bench, or quarter-sessions of the county where such person shall reside, every such person shall in respect of him or herself only, and not to or in respect of any of his or her heirs or posterity, be disabled and made incapable to inherit or take, by descent, devise, or limitation, in possession, reversion, or remainder, any lands, tenements, or hereditaments, within the kingdom of *England*, dominion of *Wales*, or town of *Berwick upon Tweed*: And that during the life of such person, or until he or she do take the said oaths, and make, repeat, and subscribe the said declaration, in manner as aforesaid, the next of his or her kindred, which shall be a protestant, shall have and enjoy the said lands, tenements, and hereditaments, without being accountable for the profits by him or her received during such enjoyment thereof, as aforesaid. But in case of any wilful waste committed on the said lands, tenements, or hereditaments, by the person so having or enjoying the same, or any other by his or her licence or authority, the party disabled, his, or her executors and administrators, shall and may recover treble damages for the same against the person committing such waste, his or her executors or administrators, by action of debt in any of his majesty's courts of record at *Westminster*; and that from and after the tenth day of *April*, which shall be in the year of our Lord one thousand seven hundred, every papist, or person making profession of the popish religion, shall be disabled, and is hereby made incapable to purchase, either in his or her own name, or in the name of any other person or persons, to his or her use, or in trust for him or her, any manors, lands, profits out of lands, tenements, rents, terms, or hereditaments, within the kingdom of *England*, dominion of *Wales*, and town of *Berwick upon Tweed*; and that all and singular estates, terms, and any other interests or profits whatsoever out of lands, from and after the said tenth day of *April*, to be made, suffered, or done, to or for the use or behoof of any such person

saying mass, &c.

or keeping school, &c.

Papists not taking the oaths in 6 months after 18 years of age,

30 Car. 2, stat. 2, c. 1.

Incapable to inherit any lands, &c.

Next of kin, being a protestant, to enjoy the same,

and not accountable, &c.

except for wilful waste Explained by 3 Geo. 1, c. 18, s. 4.

Papist, &c. incapable to purchase lands, &c.

son or persons, or upon any trust or confidence, mediately or immediately, to or for the benefit or relief of any such person or persons, shall be utterly void and of none effect, to all intents, constructions, and purposes, whatsoever.

Act not to extend to popish priest saying mass, &c. in foreign minister's house, so as he be not King's natural born subject, &c.

3 Jac. 1, c. 5.

Person convicted of sending child, &c. beyond sea, to be educated in the Romish religion, to forfeit 100 l.

Popish parent refusing to allow his protestant child, &c. fitting maintenance, on complaint thereof, lord chancellor, &c. to make order therein.

SECT. 5. " Provided always, That nothing in this act contained shall be construed to extend to any popish priest for saying mass, or officiating as a priest, within the dwelling-house of any foreign minister residing here, so as such priest be not one of his majesty's natural born subjects, nor naturalized within any of his kingdoms or dominions, and so as the name of such priest, and the place of his birth, and the foreign minister to whom he shall belong, be entred and registered in the office of the principal secretary of state.

SECT. 6. " And whereas by an act made in the third year of king *James* the first, intituled, *An act to prevent and avoid dangers which may grow by popish recusants*, whosoever shall be convicted of sending, or causing to be sent, any child, or any other person under their government, into parts beyond the seas out of the king's obedience, to the intent that such child or person so sent shall be educated in the Romish religion, contrary to the said act, is to forfeit one hundred pounds, one half to the king's majesty, and the other half to him that shall sue for the same: For the greater encouragement and reward of those who shall discover such offenders, be it enacted by the authority aforesaid, That the said sum of one hundred pounds shall be to the sole use and benefit of him or her who shall discover and convict any person so offending, to be recovered in such manner as in the said recited act is enacted; any thing in the said act to the contrary notwithstanding.

SECT. 7. " And to the end that the protestant children of popish parents may not in the life times of such their parents, for want of fitting maintenance, be necessitated, in compliance with their parents, to embrace the popish religion, contrary to their own inclinations: be it enacted by the authority aforesaid; That from and after the said five and twentieth day of *March*, one thousand seven hundred, if any such parent, in order to the compelling such his or her protestant child to change his or her religion, shall refuse to allow such child a fitting maintenance, suitable to the degree and ability of such parent, and to the age and education of such child, then upon complaint thereof made to the lord high chancellor of *England*, or lord keeper of the great seal, or commissioners for the great seal for the time being, it shall be lawful for the said lord chancellor, lord keeper, or commissioners to make such order therein as shall be agreeable to the intent of this act."

STAT. 12 *Ann. st. c. 14.* [*A. D. 1714, intituled*] " An act for rendring more effectual an act made in the third year of the reign of king *James* the First, intituled, *An act to prevent and avoid dangers which may grow by popish recusants*; and also of one other act made in the first year of the reign of their late majesties king *William* and queen *Mary*, intituled, *An act to vest in the two universities the presentations of benefices belonging to papists*;

pists; and for vesting in the lords of justiciary power to inflict the same punishments against jesuits, priests, and other trafficking papists, which the privy-council of Scotland was impowered to do by an act passed in the parliament of Scotland, intituled, *Act for preventing the growth of popery.*"

"Forasmuch as by an act of parliament made in the third year of the 3 Jac. 1, c. 5. reign of king James the First, intituled, *An act to prevent and avoid dangers which may grow by popish recusants*, and also one other act made in the first 1 W. & M. year of the reign of their late majesties king William and queen Mary, *Sess. 1, c. 26.* intituled, *An act to vest in the two universities the presentations of benefices belonging to papists*, the presentation, nomination, collation, and donation of and to benefices, prebends, or ecclesiastical livings, schools, hospitals, and donatives, belonging to popish recusants, and other persons, thereby disabled to present, collate, or nominate, are given to the two universities; but they are so given only where such persons are and stand convicted by such ways and means as in the said recited acts are mentioned and provided; which acts do nevertheless prove ineffectual for such purposes, by reason such patrons are not convicted, or not in such manner as the said acts do direct and appoint: therefore for making the said laws more effectual, and for the speedier and easier vesting the presentations to such benefices in the two universities, according to the intention of the said laws, be it enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, That After 10 July, every papist, or person making profession of the popish religion, and every 1714, papists, child, not being a protestant, under the age of one and twenty years, of &c. disabled to present to every such papist, or person professing the popish religion, and every mort- any benefice, gagee, trustee, or person any ways intrusted, directly or indirectly, mediately or immediately, by or for any such papist, or person making profession of the popish religion, or such child, as aforesaid, whether such trust be declared by writing or not, shall, from and after the tenth day of July, which shall be in the year of our Lord one thousand seven hundred and fourteen, be disabled, and is hereby made incapable to present, collate, or nominate to any benefice, prebend, or ecclesiastical living, school, hospital, or donative, or to grant any avoidance of any benefice, prebend, or ecclesiastical living; and that every such presentation, collation, nomination, and grant, and every admission, institution, and induction to be made thereupon, shall be utterly void and of no effect, to all intents, constructions, and purposes whatsoever; and that in every such case the chancellor and scholars of the university of Oxford, and the chancellor and scholars of the university of Cambridge, by what name or names soever they, or either of them, are incorporated, shall respectively have the presentation, &c. in the respective counties &c. mentioned in 3 Jac. 1, c. 5. nomination, collation, and donation, of and to every such benefice, prebend, or ecclesiastical living, school, hospital, and donative, set, lying, and being in the respective counties, cities, and other places and limits, in the said act of the third year of king James mentioned, as in and by the said act is directed and appointed in the case of a popish recusant convict.

When any presentation is brought to any archbishop, &c. he may tender to the person if present, the declaration in 25 Car. 2, c. 2. *Sect. 23.* "And be it further enacted by the authority aforesaid, That from and after the said tenth day of *July*, when and as often as any presentation to any benefice, or ecclesiastical living shall be brought to any archbishop, bishop, or other ordinary, from any person who shall be reputed to be, or whom such archbishop, bishop, or other ordinary, shall have cause to suspect to be a papist, or trustee of any person making profession of the popish religion, or suspected to be such, it shall and may be lawful to and for such archbishop, bishop, or other ordinary, and he is hereby required to tender or administer to every such person, if present, the declaration against transubstantiation, set down and expressed in an act of parliament made in the five and twentieth year of the reign of the late king *Charles* the Second, intituled, *An act for preventing dangers which may happen from popish recusants*, to be by such person made, repeated, and subscribed; and in case such person shall be absent, the said archbishop, bishop, or other ordinary, shall, by notice in writing to be left at the place of habitation of such person, appoint some convenient time and place when and where such person shall appear before such archbishop, bishop, or other ordinary, or some persons to be authorized by such archbishop, bishop, or other ordinary, by commission under his or their seal of office; and upon such appearance, the said archbishop, bishop, or other ordinary, or such commissioners, shall tender or administer the said declaration to the person making such presentation; and in case such person shall neglect or refuse to make, repeat, and subscribe such declaration, when the same shall be so tendered, as aforesaid, or shall neglect or refuse to appear before such archbishop, bishop, or other ordinary, or such commissioners, upon such notice, as aforesaid, That then such presentation shall be utterly void and of none effect, and in every such case, such archbishop, bishop, or other ordinary, shall, within ten days next after such neglect or refusal, send and give a certificate under his or their seal of office of such neglect or refusal to the vice chancellor, for the time being, or that university to whom such presentation would of right belong, if such person so presenting, had been a popish recusant convict; and it shall and may be lawful, to and for the chancellor and scholars of such university, to present a person qualified according to the said acts to such benefice or ecclesiastical living; and the presentation to such benefice or ecclesiastical living, for that turn only, is hereby given unto, and vested in them for that purpose; any matter, clause, or thing contained in either of the said former recited acts to the contrary thereof notwithstanding.

If absent, summon him to appear:

Refusing to make the declaration, or to appear, the presentation shall be void:

And the archbishop, &c. shall certify such refusal to the university, who shall present, &c.

Bishops, &c. to examine persons presented on oath.

Sect. 3. "And for the better discovery of all secret trusts, and fraudulent conveyances made by papists, or persons making profession of the popish religion, of their advowsons and right of presentation, nomination, and donation, to any benefices or ecclesiastical livings; be it further enacted by the authority aforesaid, That when the presentation of any person, presented to any benefice or ecclesiastical living, shall be brought to any archbishop, bishop, or other ordinary, the said archbishop, bishop, or ordinary, is hereby required, before he give institution, to examine the person presented, upon oath, whether to the best,

best and utmost of his knowledge and belief, the person or persons, who have made such presentation, be the true and real patron or patrons of the said benefice or ecclesiastical living, or made the said presentation in his, or her, or their own right, or whether such person or persons so presenting be not, mediately or immediately, directly or indirectly, trustee or trustees, or any way intrusted for some other, and what person or persons by name, who is or are papists, or make profession of the popish religion, or the children of such, or for any other, and what person or persons, or what he knows, has heard, or believes, touching or concerning the same; and if such person or persons so presented, shall refuse to be so examined, or shall not answer directly thereto, then and in every such case such presentation shall be void.

Refusing to be examined, the presentation shall be void.

Sect. 4. "And be it further enacted by the authority aforesaid, That it shall and may be lawful for the chancellor and scholars of the respective universities, to whom the presentation to such benefices and ecclesiastical livings should belong, in case the rightful patrons had been popish recusants convict, and their presentees or clerks, for the better discovery of such secret and fraudulent trusts, had done, made, and created, by or for such papists, or persons professing the popish religion, and their children, as aforesaid, to exhibit their bill in any court of equity against such person or persons presenting, and such person or persons as they have reason to believe to be the *cestuy que trust* of the advowson of such benefice or ecclesiastical living, or any other person who they have cause to suspect may be able to make any other or further discovery of such secret trusts and practices; to which bill the defendants therein named, being duly served with the process of the court in which the said bill shall be exhibited, shall forthwith directly answer to the facts charged and enquired in the said bill, at the discretion of the court where such bill shall be exhibited; and in case the defendants, or any of them, shall refuse or neglect to answer the said bill in such reasonable time as shall be for that purpose allowed and appointed, by discretion of the said court where the said cause shall be depending, (the distance of place and the circumstances of the defendant or defendants considered) that then and in such case the said bill shall be taken *pro confesso*, and be allowed as evidence against such person, so neglecting and refusing, and his trustee or trustees, and his and their clerk: provided that every person having fully answered such bill in such court of equity, and not knowing any thing of any such trust for a papist or other person disabled, as aforesaid, shall be entitled to his costs, to be taxed according to the course of the court.

University may exhibit bills in chancery for the discovery of fraudulent trusts.

Sect. 5. "And be it further enacted by the authority aforesaid, That it shall and may be lawful for the court where any *quare impedit* shall be hereafter depending, at the instance of either of the said chancellors and scholars, or their clerk, being plaintiffs or defendants in such suit, by motion in open court, at their discretion, to make any rule or order requiring satisfaction, upon the oath of such patron and his clerk, who in the said suit shall contest the right of the said university to present to such benefice or ecclesiastical living, by examination of them, or either of them,

When any *quare impedit* is depending the court may administer an oath to discover any secret trust.

And if it appear that the patron is a trustee, he shall discover for whom, or be punished as guilty of a contempt.

Court may order the person for whom such patron is a trustee to appear and make the declaration, &c. who refusing shall be esteemed a recusant convict.

The answer of such patron, &c. to be allowed as evidence.

Persons making such discovery, liable only to the loss of the presentation.

If such bill be exhibited by the university, no lapse shall incur, &c. till three months after the answer put in &c.

in open court, or by commission under the seal of such court for examination of them, or either of them, or by affidavit, as the said court shall find most proper, in order to the discovery of any secret trust, frauds or practices relating to the said presentation then in question; and in case it appear to the court, upon the examination of such patron, and clerk, or either of them, that the said patron is but a trustee for some other person or persons, that then the said patron and his clerk shall discover who such person or persons are, and where he, she, or they live or inhabit; and upon their refusal to make such discovery, or to give such satisfaction, as aforesaid, they shall be punished as persons that are guilty of a contempt to the said court; and in case such person or his clerk shall discover the person for whom the said patron is a trustee, that then and in such case the said court, upon motion made in open court, shall make a rule or order, that the person or persons, for whom the said patron is a trustee, shall, in the said court, or before commissioners to be appointed for that purpose, under the seal of the said court, make, repeat, and subscribe the declaration against transubstantiation herein before mentioned, and likewise, on pain of incurring a contempt against the said court, give such further satisfaction upon oath, touching or relating to the said trust, as the said court shall think fit; and such person so required to make, repeat, and subscribe the said declaration, and refusing or neglecting so to do, shall be esteemed as a popish recusant convict in respect of such presentation.

Sec. 6. " And be it further enacted, That the answer of such patron and patron, and the person for whom he or they are any ways intrusted, and his and their clerk, or any of them, and his and their or any of their examinations and affidavits taken, as aforesaid, by order of any court where such *quare impedit* shall be depending, or by any archbishop, bishop, or other ordinary, or the commissioners, as aforesaid, (which examinations shall therefore be reduced into writing, and signed by the party examined) shall be allowed as evidence against such patron so presenting, and his clerk.

Sec. 7. " Provided always, That no such bill, nor any discovery to be made by any answer thereunto, or to any such examination, as aforesaid, shall be made use of to subject any person making any such discovery, or not answering such bill, to any penalty or forfeiture, other than the loss of the presentation then in question.

Sec. 8. " And it is hereby further enacted, That in case of any such bill or bills of discovery, as aforesaid, exhibited in any court of equity by the chancellor and scholars of either of the said universities, or their pre-
 sents, no lapse shall incur, nor plenarty be a bar against such chancellor and scholars, in respect of the benefice or ecclesiastical living, touching which such bill shall be so exhibited, till after three months from the time that the answer to such bill shall be put in, or the same be taken *pro confesso*, or the prosecution thereof deserted; provided that such bill or bills be exhibited before any lapse incurred.

Sec.

Señ. 9. “ And whereas it hath been doubted whether any writ of *quare impedit*, brought by the respective universities, for any presentation, nomination, collation, or donation pursuant to the said recited acts, or either of them, may be brought by them, in or by the name of chancellor and scholars, or ought to be by their true name of incorporation respectively ; it is hereby declared, That the said respective chancellors and scholars of the said universities are by this act, and were by the said former acts, entitled to sue any writ of *quare impedit*, by the name of chancellor and scholars of the university of *Oxford*, and chancellor and scholars of the university of *Cambridge* respectively, or by their respective proper names of incorporation, at their election. The university may sue any writ of *quare impedit*.

Señ. 10. “ And be it further enacted, That in case of any trust for any papist, or person professing the popish religion, confessed or discovered in and by any answer to such bill, as aforesaid, or such examination, as aforesaid, it shall and may be lawful for the court where such discovery shall be made, and such court is hereby enabled to enforce the producing of the deeds creating and relating to the said trusts, by such methods as they shall find proper. The court may enforce the producing of deeds relating to trusts.

Señ. 11. “ Provided always, That nothing herein before contained shall extend to that part of *Great-Britain* called *Scotland*. Not to extend to Scotland.

Señ. 12. “ And whereas by the determination of the late privy-council of *Scotland*, the punishments contained in an act of parliament of *Scotland*, passed in the eighth session of the first parliament of king *William*, [intituled, An act for preventing the growth of popery,] cannot be fully put in execution against jesuits, priests, and other trafficking papists, who disguise and shelter themselves under borrowed names, to avoid the penalty of the law ; it is therefore hereby enacted, and be it enacted by the authority aforesaid, That the lords of her majesty’s justiciary in *Scotland* be hereby empowered to inflict the same punishments against jesuits, priests, and other trafficking papists, which the privy-council of *Scotland* was empowered to do by the aforesaid act of parliament. The lords of justiciary may inflict the same punishments on jesuits, &c. which the privy-council of Scotland was empowered to do by an act passed in that kingdom.

STAT. I *Geo. 1. Stat. 2, c. 55. [A. D. 1715, Intituled]* “ An act to oblige papists to register their names and real estates.”

Señ. 1. “ Whereas the papists within this kingdom, notwithstanding the tender regard that hath been shewn them for many years last past, by omitting to put in execution the many penal laws which (on occasion of the many just provocations they have given, and horrid designs they have framed for the destruction of this kingdom, and the extirpation of the protestant religion) have been made against them ; and notwithstanding they have enjoyed, and do still enjoy the protection and benefit of the government, as well as the rest of his majesty’s subjects, have not only, all or the greatest part of them, been concerned in stirring up and supporting the late unnatural rebellion, for the dethroning and murdering his most sacred majesty ; for destroying our present happy establishment ; for settling a popish pretender upon the throne of the kingdom ; for the destruction of the

the protestant religion, and the cruel murdering and massacring its professors, by which they have brought a vast expence upon this nation. and whereas it manifestly appears by their behaviour, that they take themselves to be obliged, by the principles they profess, to be enemies to his majesty, and to the present happy establishment, and watch for all opportunities of fomenting and stirring up new rebellions and disturbances within the kingdom, and of inviting foreigners to invade it: And for as much as it is highly reasonable that they should contribute a large share to all such extraordinary expences, as are or shall be brought upon this kingdom by their treachery and instigation: and to the end that, by paying largely to the late great expences by them brought upon this nation, they may be deterred, if possible, from the like offences for the future; and that this nation may have the benefit of his majesty's gracious condescension, in giving his interest in the two third parts of all the papists estates, which are already forfeited to him by law, for the use of the publick, either by seizing the said two third parts of their estates for the publick service, or by laying some tax or charge upon their estates in lieu thereof, in such proportion, and in such manner, as shall be determined to be reasonable in parliament: and to the end that their estates may be certainly known and discovered, for the purposes aforesaid, or for such other ends as a parliament shall think reasonable: be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that all and every person or persons, not having taken the oaths herein after mentioned before the last day of *Trinity* term, one thousand seven hundred and sixteen, in the manner by law required, having any estate or interest in any lands, tenements, or hereditaments, or who shall hereafter have any estate or interest in any lands, tenements, or hereditaments, lying, being, or arising in that part of *Great Britain* called *England*, or in *Wales*, or the town of *Berwick upon Tweed*, who is or shall be a popish recusant, or papist, or is or shall be educated in the popish religion, or whose parent or parents shall be a papist or papists, or who shall use or profess the popish religion, shall, if he, she, or they be, on the twenty-fourth of *June*, one thousand seven hundred and sixteen, of the age of one and twenty years, on or before the twentieth day of *January*, in the year of our Lord one thousand seven hundred and sixteen, and if he, she, or they be, on the said twenty-fourth of *June*, unborn, or under that age, within the space of six months next after he, she, or they shall respectively attain to that age, and have such estate or interest, as aforesaid, take the several oaths appointed to be taken by such persons who bear any office under his majesty, by an act made in this present session of parliament, [intituled, An act for the further security of his majesty's person and government, and the succession of the crown in the heirs of the late princess *Sophia*, being protestants, and for extinguishing the hopes of the pretended prince of *Wales*, and his open and secret abettors,] and also repeat and subscribe the declaration set down and expressed in an act of parliament made in the thirtieth year of the late

Papists in
England, &c.
of the age of
21 years on
June 24, 1716,
not having
taken the
oaths, shall,
before Jan.
20, 1716,

take the
oaths appoint-
ed by 1 Geo. I.
Stat. 2, c. 13.

and repeat
and subscribe

late king *Charles* the Second, [intituled, An act for the more effectual the declara-
 preserving the king's person and government, by disabling papists from tion in 30
 sitting in either house of parliament,] in the high court of chancery, court Car. 2, stat. 2.
 of king's bench, court of common pleas, or court of exchequer, or at the c. 4.
 general quarter-sessions of the peace to be holden for the county, riding,
 or division, where such lands, tenements, or hereditaments, or some part
 thereof, shall lie or arise, between the hours of nine and twelve of the
 clock in the forenoon, or in default thereof, shall within the space of six or in default
 months next after the time hereby appointed for him, her, or them to shall within
 take the said oaths, and so, from time to time, within six months after he, six months
 she, or they, or any trustee or trustees for him, her, or them, or his, her after they
 or their benefit or advantage, shall come into the possession or perception possession of
 of the rents or profits of any other lands, tenements, or hereditaments, any lands, &c.
 register, or procure to be registred, his, her, or their name or names, and register their
 all such lands, tenements, and hereditaments, whereof he, she, or they, name and
 or any trustee or trustees for him, her, or them, or his, her, or their be- land, &c. in
 nefit or advantage, shall be in possession, or in the receipt or perception of books to be
 the rents or profits which are situate, lying, being, or arising in *England*, kept by the
Wales, or the town of *Berwick upon Tweed*; and shall express or cause to clerks of the
 be expressed in such register, in what parish, township, or place, such lands, peace.
 tenements, and hereditaments, and every part thereof lie, or arise, and Manner of
 who, for the time being, is or are the possessors thereof, and of every part registring.
 thereof, and what estate or interest he, she, or they, whose name or names
 is or shall be so registred respectively, have in the same, and in every part
 and parcel thereof respectively, and the yearly rent reserved to him, her,
 or them for the same, if the same shall be let; and if the same shall be let Estates let
 upon lease, then by whom such lease was made, what yearly or other rents upon lease.
 is reserved thereupon, and what fine or sum of money was paid for such
 lease thereof, in case the same was made by himself, or any person in trust
 for him, or that he was party or privy thereunto, and the time and day of
 the month and year when such entry shall be made, in a parchment book
 or books, roll or rolls, which shall be kept by the clerk of the peace for
 every county, riding, and division where such lands, tenements, or heredi-
 taments shall respectively lie, arise or be. And to the end that all fraudu-
 lent or covenous registring any persons names or estates, who do not desire Persons names
 to have them registred, may be prevented, every person whose name and to be sub-
 estate shall be, or ought to be registred, as aforesaid, is hereby obliged to scribed in the
 take care that his name be, within the said six months hereby allowed for presence of
 making such registry, subscribed to such registry or entry in the said books two justices.
 or rolls, in the presence of two or more justices of the peace for the county,
 riding, or division where such registry shall be, in open sessions, either by
 the person himself, whose name and estate shall be so registred, or by his
 attorney or attornies thereunto lawfully authorized by warrant of attorney
 under his hand and seal, executed by him in the presence of two or more
 witnesses, two of which witnesses at least shall make proof of such execution
 upon their oaths at the quarter-sessions where such name shall be subscribed
 or registry produced; and the justices of the said court of quarter-sessions

are hereby impowered and required to examine such witnesses upon oath for that purpose ; and two of the justices of the peace then present shall subscribe their names to every such entry which shall be so made before them, as witnesses that the same was duly made, as aforesaid ; and in default thereof, each of the said justices then present shall forfeit twenty pounds to the king. And to the end that the parties concerned in the premises may find no difficulty in procuring their names and estates to be registred, as aforesaid, all and every such clerk and clerks of the peace are hereby required to keep parchment books or parchment rolls at some notorious place in the county, riding, or division, in which they shall act as clerks of the peace ; and shall by themselves or their lawful deputies register and enter in the said books or rolls the christian and surnames of all and every such person or persons, who shall come in person and desire to be registred, as aforesaid, or shall send any writing under his, her, or their hand to such clerk of the peace or his deputy, desiring him to register his, her, or their name or names ; and shall also register the estate in lands, tenements, and hereditaments, of every such person and persons, in such manner and in such words, as he, she, or they shall, by any writing signed by him, her, or them respectively, desire such clerk of the peace, or his deputy, to register the same : provided the person or persons who desire such registry to be made, shall tender and pay to such clerk and clerks of the peace, or to his or their lawful deputies, the fees hereby appointed to be paid unto him or them for such registry, and so that they apply to him or them to enter such registry, and deliver to him in writing the words he or they respectively desire to have so registred or entered, ten days at the least before the quarter-sessions where the entries thereof are to be subscribed, as aforesaid ; and such clerk or clerks of the peace, or their lawful deputy or deputies, shall enter such persons names and registry of their estates before the next quarter-sessions of the peace after such delivery in the said books or rolls, and shall carry the said books and rolls in which such entries shall be so made with him or them to the next and every other quarter-sessions of the peace to be held for the county, riding, division, or place, where such entry shall be made, until the time of such subscribing the same shall be expired ; to the end that all and every the persons whose names shall be or ought to be registred, as aforesaid, or their respective attorney or attornies, may have an opportunity to come to the said sessions, and subscribe the names of the persons so to be registred to the same ; and such clerk and clerks of the peace shall also keep alphabetical tables of the surnames of all and every such person and persons whose names and estates shall be so registred, and of the parishes and townships where the lands so registred lie, with reference to the place in the book or books, roll or rolls, where such names and lands shall be registred ; and shall also carefully keep all such warrants of attorney, as shall be so proved, as aforesaid, upon a file, together with such books and rolls ; and shall likewise enter such warrants of attorney upon record, and shall have for such registry and entry on record, a fee of three pence for every two hundred words which such registry and entry on record shall contain, and no more, to be paid by the

Two justices to subscribe their names, on penalty of 20l.

Clerks of the peace to keep parchment books to enter the names,

and register the estates, &c.

Fees to be paid.

Books to be carry'd to the quarter-sessions.

Clerks of the peace to keep alphabetical tables of the surnames,

and file the warrants of attorney.

3d. for every 200 words,

the person registering the same; and shall also have the sum of four pence, ^{qd. for every} and no more, for every search that shall be made for the name or estate ^{search.} of any person; and is and are hereby required to make search on the request of any person or persons who shall pay such fees, and also shall permit and suffer such person and persons to inspect and search the said tables, books and rolls, and inspect such letters of attorney as shall be so filed, if he or they shall desire it; and every such clerk of the peace is ^{Clerk of the} hereby required to give copies of such registries, subscribed by himself ^{peace shall} or his lawful deputy, to every person and persons who shall desire such ^{give copies of} copies, and tender him the fees hereby appointed to be paid for the same; and shall suffer such persons who shall request him so to do, to examine the same with the roll or books by him kept, and for so doing shall take a fee of three pence for every two hundred words contained in every such copy as shall be so taken, and no more; and if any clerk of the peace ^{and refusing} shall neglect or refuse to do any of the matters or things hereby appointed ^{shall forfeit} to be done by him, and be thereof lawfully convicted, he shall thereby ^{his office.} forfeit his office; and if any such person or persons, who is or are hereby ^{Penalty of} required or intended to take and subscribe such oath, and repeat and sub- ^{persons not} scribe such declaration, as aforesaid, or in default thereof, to register, or ^{taking the} cause to be registred, his, her, or their name and names, estate and estates, ^{oaths, or not} as aforesaid, shall not either take and subscribe such oath, and repeat and ^{registring} subscribe such declaration, as aforesaid, in such manner, as aforesaid, or ^{their estates,} register his, her, or their respective name and names, and estate, in such ^{&c.} manner, as aforesaid; and also subscribe his, her, or their respective name or names to such registry, or procure the same to be subscribed thereto by his, her, or their respective attorney or attorneys, lawfully authorized, as aforesaid, so to do, within the respective times herein before limited or appointed for his, her, or their doing thereof, or shall not register the same truly, that then, and in every such case, the person and persons wilfully neglecting or refusing so to do, or committing any fraud in such registry, shall forfeit the fee-simple and inheritance of all such lands, tenements, and hereditaments, not registred, or fraudulently registred, whereof he, she, or they, or any person or persons in trust for him, her or them, was or were seized in fee-simple at the time of such default or fraud in registering, as aforesaid, and the full value of the inheritance of all such lands, tenements, and hereditaments, not registred, or fraudulently registred, as aforesaid, whereof he, she, or they, or some person or persons in trust for him, her, or them, was not, or were not seized in fee-simple at the time of such default or fraud, as aforesaid; two third parts thereof ^{Forfeitures,} to the king, and the other third part thereof to such person or persons, ^{how to be re-} being a protestant or protestants, who shall sue for the same at the common ^{covered and} law, in any of his majesty's courts at *Westminster*, by such action, bill, ^{disposed.} plaint, suit or information, or other process, as shall be proper, according to the nature of the case and of the thing sued for, or in the high court of chancery; and the person so suing, shall be intitled in the high court of chancery to demand all such discoveries as he might do if he were a purchaser upon a valuable consideration of the estate so sued for; and to

demand a true discovery from all persons of all such incumberances and titles which any way do or may affect the same, and of all trusts relating thereto, or protecting the same; to which bill or bills no plea or demurrer shall be allowed, but the defendant or defendants shall sufficiently answer the same at large; and also, that the person suing for any such real estate, may, if he shall think fit, bring an ejectment for the same, upon his own demise, and give this act and the special matter in evidence; and if it shall appear upon trial of such ejectment, that the estate sued for is the estate of the person so neglecting to register, or fraudulently registering, and the defendant shall not be able to make it appear, that he took the said oaths, and repeated and subscribed the said declaration, in such manner as aforesaid, or otherwise, that he registred his name and estate so sued for, in such manner as aforesaid, a verdict shall be given for the lessor of the plaintiff in such ejectment, and judgment shall be thereupon had in such manner as is usual upon verdicts in ejectments, and the lessor of the plaintiff shall have costs of suit, as is usual when judgment in ejectment is recovered by, or given for the lessor of the plaintiff; and by such judgment two third parts of the lands, tenements, and hereditaments, so recovered, shall be vested in the king's majesty, his heirs and successors, and the other third part thereof in the person who shall be lessor of the plaintiff in the said ejectment.

Persons be-
yond sea on
June 18,
1716, taking
the oaths be-
fore May 20,
1717, or pro-
curing their
names, &c.
to be subscib-
ed, and estates
registred,
shall be good
and effectual.

Sec. 2. " Provided always nevertheless, and be it enacted by the authority aforesaid, That if any person or persons, who is or are hereby required or intended to take and subscribe such oaths, and made and subscribe such declaration, or to make such registry, as aforesaid, shall be beyond the seas upon the eighteenth day of *June* one thousand seven hundred and sixteen, that then, and in such case, if such person or persons shall take the oaths, or repeat and subscribe the declaration hereby appointed to be taken, repeated and subscribed, in such court, and in such manner as the same are hereby before appointed to be taken, repeated and subscribed, on or before the twentieth day of *May* one thousand seven hundred and seventeen, or in default thereof shall procure his, or their respective name and names, estate and estates, to be registred in such manner, as aforesaid, at any time within six months next after the said eighteenth day of *May* one thousand seven hundred and seventeen, that then, and in such case, such taking the oaths, and repeating and subscribing the said declaration, or such registry of his or their respective name or names, and estate or estates, shall be as good and effectual, in respect of every such person and persons so being beyond the sea upon the said twentieth day of *June* one thousand seven hundred and sixteen, as it would have been if such person had taken the said oaths, and repeated and subscribed the said declaration on or before the twentieth day of *January* one thousand seven hundred and sixteen, in such manner as aforesaid, or had registred his name and estate in such manner as aforesaid, within six months next after the said twentieth day of *January* one thousand seven hundred and sixteen.

Scilicet.

Secl. 3. “ Provided, That in case such person or persons so making default, or committing any fraud in registering, as aforesaid, after such default or fraud committed, and before he, she, or they, be thereof convicted, or any ejectment or suit brought for such forfeited lands, tenements, or hereditaments, shall *bona fide*, for a just and valuable consideration, convey over, grant, lease, or incumber all or any such lands, tenements, or hereditaments omitted, or fraudulently registred, as aforesaid, that then, and in such case, the person or persons so purchasing, or having such grant, lease, or incumbrance, as aforesaid, not knowing at the time of such purchase or incumbrance made, the said offender to be a person within the description of this act, shall not be prejudiced, nor his, her or their estate or interest in the said lands, tenements and hereditaments, impeached, for or by reason of such forfeiture, as aforesaid; but in that case the said offender shall forfeit the value of the inheritance of the said lands, tenements, and hereditaments, to be distributed and recovered, in manner as aforesaid.

Secl. 4. “ Provided always, and be it further enacted, and declared by the authority aforesaid, that nothing in this present act contained, shall extend, or be construed to extend, to compel any person whatsoever to register, or procure to be registred, any lands tenements, or hereditaments, until he, or some other person or persons, as trustee or trustees for him or his benefit, or on his behalf, is, are, have, or hath been, or shall be actually seized, and have notice thereof, or possessed, or in the receipt of the rents or profits of the same, for the space of six months.

Secl. 5. “ Provided, That nothing herein contained shall extend, or be construed to extend to compel any person or persons to register any lands, tenements, or hereditaments, whereof he, she, or they shall be only farmer or farmers, or tenants at a rack-rent, or who only do, or shall hold by lease or leases, whereupon two thirds of the full yearly value, or more, is, are, or shall be reserved.

Secl. 6. “ Provided also, That nothing herein contained shall extend to defeat or prejudice any protestant, or other creditor, who *bona fide* hath or shall have any charge or incumbrance upon any real estate or estates hereby directed to be registred; but then in case of such charge or incumbrance, the person or persons so making default, or committing any fraud in registering, as aforesaid, shall forfeit the value of such charge and incumbrance, one third part thereof to and among the person and persons who shall, by virtue of this act, sue for, and recover the lands, tenements, and hereditaments forfeited, as aforesaid, and subject to such charge and incumbrance, or any part thereof, in proportion to the part so by him, her, or them recovered, and two third parts thereof to the king's most excellent majesty, his heirs and successors.

Secl. 7. “ Provided also, and be it further enacted and declared by the authority aforesaid, That no person or persons being in the *East* or *West Indies* or *America*, shall be compelled to take the said oaths, and sign the declaration before mentioned, and register his, her, or their estate or estates, at the time within mentioned, but shall have twelve months longer than the times

Purchasers, &c. for a valuable consideration, not knowing of any default or fraud in registering, shall not be prejudiced, &c. by reason of any forfeitures.

Not to extend to persons not actually seized, &c. for the space of six months.

Nor to compel any farmers, &c. to register.

Nor to prejudice any creditor: but persons making default, &c. in registering incumbrances, shall forfeit the value.

Times allowed to persons in the *Indies* or *America*.

times herein before respectively allowed to persons beyond the seas to take the said oaths, and sign the said declaration, and register their estate and estates; any thing herein to the contrary notwithstanding."

STAT. 2 Geo. 1, c. 1st, [A. D. 1716, intituled] "An act for explaining an act passed the last session of parliament, [intituled, *An act to oblige papists to register their names and real estates*;] and for enlarging the time for such registering, and for securing purchases made by protestants."

1 Geo. 1. Stat.
2, c. 55.

Sect. 1. "Whereas by an act made in this present parliament, intituled, *An act to oblige papists to register their names and real estates*, it is enacted, That all and every person and persons, not having taken the oaths therein mentioned before the last day of *Trinity-Term*, in the year of our Lord one thousand seven hundred and sixteen, having any estate or interest in any lands, tenements or hereditaments, or who should thereafter have any estate or interest in any lands, tenements or hereditaments, living, being or arising in that part of *Great Britain* called *England*, or in *Wales*, or the town of *Berwick upon Tweed*, who was or should be a popish recusant or papist, or was or should be educated in the popish religion, or whose parent or parents should be a papist or papists, or who should use or profess the popish religion, should take the oaths, and repeat and subscribe the declaration therein mentioned, at such times, and in such manner, as is therein expressed, or in default thereof should, within the space of six months next after the time thereby appointed for him, her, or them to take the said oaths, register, or procure to be registred, his, her, or their name or names, and all such lands, tenements, and hereditaments, whereof he, she, or they, or any trustee or trustees for him, her, or them, or his, her, or their benefit or advantage, should be in the possession, or in receipt or perception of the profits, in such manner and form as is therein expressed, upon pain that the person and persons wilfully neglecting or refusing so to do, or committing any fraud in such registry, should forfeit the fee-simple and inheritance of all such lands, tenements, and hereditaments, not registred, or fraudulently registred, whereof he, she, or they, or any person or persons in trust for him, her, or them, was or were seized in fee-simple at the time of such default or fraud in registering, as aforesaid, and the full value of the inheritance of all such lands, tenements, and hereditaments, not registred, or fraudulently registred, as aforesaid, whereof he, she, or they, or any person or persons in trust for him, her, or them, was not or were not seized in fee-simple at the time of such default or fraud, as aforesaid, two third parts whereof to the king, and the other third part thereof to such person or persons, being a protestant or protestants, as should sue for the same at the common law in any of his majesty's courts at *Westminster*, or in the high court of chancery, as by the said act more fully appears: for the amending and explaining the said act, and giving a further time to papists to register their names and real estates: be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons

The time for
papists to re-
gister their

in

in this present parliament assembled, and by the authority of the same, names and
 That the time for such registering be enlarged, and the same is hereby en- recited stat:rs
 larged to the twentieth day of *October*, one thousand seven hundred and enlarged to
 seventeen. O.A. 20, 1717.

Secl. 2. " And be it further enacted by the authority aforesaid, That No suit for
 no action or suit for any penalty or forfeiture contained in this or the said frauds in regi-
 former act, for wilfully neglecting or refusing to register, or for com- string shall be
 mitting fraud in such registry, shall be commenced or brought after two commenced
 years after the offence committed against any person offending therein. years.

Secl. 3. " And be it further enacted by the authority aforesaid, That Where ma-
 where it shall happen that any manors, or reputed manors, demesne, or nors, &c. lie
 other lands, or entire farms, do lie in more counties than one, the re- in more coun-
 gistring of such manors, lands, tenements, and hereditaments in the ties than one,
 county only where the manor-house, or the house or houses to the said they shall be
 farm or lands do lie, and not in several counties, taking notice thereof in register'd in
 the said registry, that the same do extend to such other county or counties, the county
 shall be a sufficient registering of such entire manors, farms or lands, within only where
 the true intent and meaning of the said recited act. the manor
 house stands.

Secl. 4. " And whereas some doubts have arisen, as well upon the said
 recited act, as also upon one other act made and passed in the parliament
 held in the eleventh and twelfth years of the reign of the late king *William* 11 & 12 W. 3.
 the Third, [intituled, *An act for the further preventing the growth of po- c. 4.*
 pery;] and upon another act made in the first year of the reign of the late t Jac. 1, c. 4.
 king *James* the First, for the due execution of the statutes against jesuits,
 seminary priests, recusants, and other acts made against papists, and popish
 recusants, touching the sale of the real estates of persons professing the
 popish religion, or incurring the disabilities and incapacities in the said
 act mentioned: be it enacted by the authority aforesaid, That no sale for
 a full and valuable consideration of any manors, messuages, lands, tene- No sale for a
 ments, or hereditaments, or of any interest therein, by any person or per- full conside-
 sons, being reputed owner or owners, or in the possession or receipt of the ration of any
 rents and profits thereof, heretofore made, or hereafter to be made, by manors, &c.
 and for any protestant purchaser and purchasers, and merely and only for by the reputed
 the benefit of protestants, shall be avoided or impeached for or by reason owner, &c.
 or upon pretence of any of the disabilities or incapacities in the said acts, made or to be
 or any of them, contained, incurred, or supposed to be incurred, by any made to any
 of the persons making or joining in such sale, or by any other person or protestant,
 persons, from or through whom the title to such manors, messuages, lands, shall be a-
 tenements, or hereditaments, or any interest therein, is or shall be de- voided on pre-
 rived, or supposed to be derived, unless before such sale the person en- tence of the
 titled to take advantage of such disability or incapacity shall have reco- disabilities in
 vered such manors, messuages, lands, tenements, and hereditaments, or the recited
 given notice of his claim and title thereto to such purchaser, or before the acts.
 contract for such sale shall have claimed the said manors, messuages, lands, Unless such
 tenements, and hereditaments, by reason of such disability or incapacity, manors, &c.
 and have entred such claim in open court at the general session of the were recover-
 peace for the county, city, riding, or division, wherein such manors, ed before the
 entered at the sale, or notice
 of the claim
 given to the
 purchaser,
 or the claim
 entered at the
 messuages,

quarter-
sessions.

The clause is
1. & 12 W. 3,
c. 4. whereby
papists are dis-
abled from
purchasing
any manors,
&c. shall not
be hereby al-
tered or re-
pealed.

11 & 12 W. 3,
c. 4.

After Sept 29,
1717, no ma-
nors, lands,
&c. shall pass
from papists
by deed or will
unless enroll-
ed in six
months.
By 10 Geo. 1,
c. 4, sect. 19,
Provision is
made for
deeds, &c. not
enrolled since
Sept. 20,
1717, if enroll-
ed on 29 Sept.
1721.

messuages, lands, tenements, or hereditaments, lie or arise, and *bona fide*, and with due diligence, pursued for remedy in a proper course of justice for the recovery thereof: the said several acts above mentioned and referred to, or any thing therein contained to the contrary notwithstanding.

SECT. 5. " Provided nevertheless, That whereas it was, amongst other things, enacted by the said act of parliament made in the eleventh and twelfth years of the reign of the late king *William the Third*, That from and after the tenth day of *April*, which should be in the year of our Lord one thousand seven hundred, every papist, or person making profession of the popish religion, should be disabled, and was thereby made incapable to purchase either in his or her own name, or in the name of any other person or persons, to his or her use, or in trust for him or her, any manors, lands, profits out of lands, tenements, rents, terms, or hereditaments, within the kingdom of *England*, dominion of *Wales*, and town of *Berwick upon Tweed*; and that all and singular estates, terms, and any other interests or profits whatsoever out of lands, from and after the said tenth day of *April*, to be made, suffered, or done, to or for the use or behoof of any such person or persons, or upon any trust or confidence mediately or immediately, to or for the benefit or relief of any such person or persons, should be utterly void, and of no effect, to all intents, constructions, and purposes, whatsoever: it is hereby declared and enacted, That the said recited part of the said act of parliament shall not be hereby altered or repealed, but the same shall be and remain in full force, as if this act had never been made.

SECT. 6. " And be it further enacted by the authority aforesaid, That from and after the nine and twentieth day of *September*, in the year of our Lord one thousand seven hundred and seventeen, no manors, lands, tenements, hereditaments, or any interest therein, or rent or profit thereout, shall pass, alter, or change from any papist or person professing the popish religion, by any deed or will, except such deed within six months after the date, and such will within six months after the death of the testator, be inrolled in one of the king's courts of record at *Westminster*, or else within the same county or counties wherein the manors, lands, and tenements lie, by the *custos rotulorum*, and two justices of the peace, and the clerk of the peace of the same county or counties, or two of them at the least, whereof the clerk of the peace to be one. *Such deeds, &c. are good, if inrolled on 29 September, 1731.* 3 Geo. 2, c. 29, sect. 6, &c.

STAT. II Geo. 2, c. 17 [*A. D. 1738, intituled*] " An act for securing the estates of papists conforming to the protestant religion, against the disabilities created by several acts of parliament relating to papists; and for rendering more effectual the several acts of parliament made for vesting in the two universities in that part of *Great Britain* called *England* the presentations of benefices belonging to papists."

"Whereas persons professing, or educated in the popish religion, are by divers acts of parliament subjected to several disabilities and incapacities,

ties, which may affect persons conforming from the popish to the protestant religion: and whereas many persons have already conformed to the protestant religion, and are willing to submit to his majesty's government in as full and ample manner as any other of his majesty's subjects, and others are likely so to do; be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That all and every person or persons being reputed owner or owners, or in possession or receipt of the rents and profits of any manors, messuages, lands, tenements, or hereditaments, or of any interest therein, who having been, or reputed to be a papist or papists, or educated in the popish religion, hath or have conformed to, or hereafter shall conform to and profess, the protestant religion, and hath or have taken, or shall take the oaths of allegiance, supremacy, and abjuration, and also subscribed, or shall subscribe, the declarations set down and expressed in an act of parliament made in the thirtieth year of the reign of the late king *Charles the Second*, intituled, *An act for the more effectual preserving the king's person and government, by disabling papists from sitting in either house of parliament*, to be by him, her, or them repeated and subscribed in the courts of chancery, or king's bench, or quarter-sessions of the county where such person or persons shall reside (all which shall be recorded in one of his majesty's courts of record at *Westminster*, or such quarter-sessions as aforesaid) and all and every person and persons being protestants, claiming under such person or persons conforming and performing the requisites as aforesaid, for their own benefit, or for the benefit of any other protestant or protestants, and not for the benefit of any papist or papists, shall hold, possess, and enjoy all such manors, messuages, lands, tenements, and hereditaments, freed and discharged of and from the disabilities and incapacities in the said acts or any of them contained, incurred, or supposed to be incurred by such person or persons so reputed owner or owners, or in possession or receipt of the rents and profits as aforesaid, or by any other person or persons, by, from, or through whom the title to such manors, messuages, lands, tenements, or hereditaments, or any interest therein was or shall be derived or supposed to be derived, for such estate, right, title or interest, as he, she or they had or would have had, if no such disability or incapacity had been incurred; unless the person or persons intitled to take advantage of such disability, incapacity, or defect of title, hath or have actually and *bona fide* recovered, or shall hereafter recover, such manors, messuages, lands, tenements, or hereditaments, by judgment or decree in some action or suit already commenced, or hereafter to be commenced, six kalendar months at least before the making of such record, and to be prosecuted with due diligence.

The reputed owners, or persons in possession of the profits of any estate, being papists, on conforming to the protestant religion, and taking the oaths, &c. and subscribing the declaration expressed in the act 30 Car. II. (to be recorded in one of the courts of record at Westminster, or quarter-sessions of the county) and all protestants claiming under them for the benefit of protestants only, to possess such estate, freed of the disabilities incurred by such owners, &c. unless the persons intitled to take advantage of such disability have recovered, or shall recover, such estate by judgment in some

action already commenced, or to be commenced within six kalendar months before the making such record.

Sett. 2. " Provided nevertheless, That this act or any thing herein contained shall not take away or prejudice the right of any person or persons

who shall have been in possession 2 kalendar months precedent to such record.

sons intitled to take advantage of such disability or incapacity, who now is or are in the actual possession of, or shall have, precedent to the making of such record, been in quiet possession of any such manors, messuages, lands, tenements, or hereditaments, by the space of two kalendar months.

Persons returning to the popish religion, not to have any benefit by this act.

Seet. 3. " Provided always, and be it further enacted by the authority afore said, That if any such person or persons so conforming as afore said, shall after such conformity return to, or again profess the popish religion, every such person and persons shall for ever afterwards be disabled from and be incapable of having or enjoying any benefit, privilege, or advantage of this act, and shall from thenceforth be liable to the same disabilities, incapacities, and forfeitures, as if he, she, or they had not taken the said oaths, and subscribed the declaration, as afore said; any thing herein contained to the contrary notwithstanding.

This act not to prejudice the right of any person intitled to any reversion, if pursued within 12 kalendar months, &c.

Seet. 4. " Provided always, That nothing in this act contained shall extend to take away or prejudice the right of any person intitled to any remainder or reversion in any such manors, messuages, lands, tenements, or hereditaments, in case such person shall pursue his or her said right by some action or suit to be commenced within the space of twelve kalendar months next after the precedent estate or estates, on which such remainder or reversion depends and is expectant, shall be determined; or within twelve kalendar months from and after the twenty-ninth day of *September*, one thousand seven hundred and thirty-eight, if such precedent estate or estates be already determined by the death or deaths of any person or persons, whose deaths have been concealed from or not known to the person intitled to such remainder or reversion, by reason of their having been buried beyond the seas, or in a private and clandestine manner at home, and shall prosecute such action or suit with due diligence.

Recites the acts 12 Ann. stat. 2, c. 14. and 1 W. & M. stat. 1, c. 26.

Seet. 5. " And whereas by an act made in the twelfth year of the reign of queen *Anne*, for rendring more effectual an act made in the third year of the reign of king *James* the First, intituled, *An act to prevent and avoid dangers which may grow by popish recusants*; and also one other act made in the first year of the reign of king *William* and queen *Mary*, intituled, *An act to vest in the two universities the presentations of benefices belonging to papists*, it was enacted, That every papist or person making profession of the popish religion, and every child, not being a protestant, under the age of one and twenty years, of every such papist or person professing the popish religion, and every mortgagee, trustee, or person any ways intrusted directly or indirectly, mediately or immediately, by or for any such papist or person making profession of the popish religion, or such child, as afore said, whether such trust be declared by writing or not, should be disabled and made incapable to present, collate, or nominate to any benefice, prebend, or ecclesiastical living, school, hospital, or donative, or to grant any avoidance of any benefice, prebend, or ecclesiastical living, and that every such presentation, collation, nomination, and grant, and every admission, institution, and induction to be made thereupon, should be utterly void and of no effect, to all intents, constructions, and purposes whatsoever; and that in every such case the chancellor and scholars of the university of *Oxford*, and the chan-

cellor

tellor and scholars of the university of *Cambridge*, should respectively have the presentation, nomination, collation, and donation of and to every such benefice, prebend, or ecclesiastical living, school, hospital, and donative, set, lying, and being in the respective counties, cities, and other places and limits in the said act of the third of king *James* mentioned, as in and by the said act is directed and appointed in the case of a popish recusant convict: And whereas for the better discovery of all secret trusts and fraudulent conveyances made by papists or persons making profession of the popish religion, of their advowsons and right of presentation, nomination, and donation to any benefices or ecclesiastical livings, several provisions were made by the said act of the twelfth year of the reign of queen *Anne*, which have been fraudulently evaded by persons obtaining from such papists, without a full and valuable consideration, grants of such advowsons and right of presentation, nomination, and donation, upon confidence only, that such grantees will at the request of such papists present to such benefices or ecclesiastical livings, clerks nominated by such papists, who have been presented accordingly, contrary to the true intent and meaning of the said acts, and to the great hurt of the protestant interest of this kingdom; be it therefore enacted by the authority aforesaid; That Every grant to be made from and after the sixth day of *May*, one thousand seven hundred and thirty-eight, of any advowson or right of presentation, collation, nomination, or donation of and to any benefice, prebend, or ecclesiastical living, school, hospital, or donative, and every grant of any avoidance thereof, by any papist or person making profession of the popish religion, or any mortgagee, trustee, or person any ways intrusted directly or indirectly, mediately or immediately, by or for any such papist or person making profession of the popish religion, whether such trust be declared by writing or not, shall be null and void, unless such grant shall be made *bona fide*, and for a full and valuable consideration to and for a protestant purchaser or protestant purchasers, and meerly and only for the benefit of a protestant or protestants; and that every such grantee, or person claiming under any such grant, shall be deemed to be a trustee for a papist or person professing the popish religion, as aforesaid, within the true intent and meaning of the said act; and that all such grantees, or persons claiming under such grants, and their presentees, shall be compelled to make such discovery relating to such grants and presentations made thereupon, and by such methods, as in and by the said act of the twelfth year of the reign of queen *Anne* are directed in the case of trustees or papists, or persons professing the popish religion; and that every demise to be made from and after the said sixth day of *May*, by any papist or person professing the popish religion, of any such advowson or right of presentation, collation, nomination, or donation, or any such avoidance, with intent to secure the benefit thereof to the heirs or family of such papist or person professing the popish religion, shall be null and void; and that all such devisees, and persons claiming under such devises, and their presentees, shall in like manner, and by such methods, be compelled to discover, whether to the best of their knowledge and belief, such devises were not made with the said intent."

Every grant made after 6 May, 1738, of any ecclesiastical living, &c. by any papist, &c. void,

unless made for a valuable consideration to a protestant purchaser, &c.

Every devise made of any ecclesiastical living after 6 May, 1738, by a papist, void.

Post-Office.

STAT. 9 *Ann. c. 10.* [*A. D. 1710, intituled*] “An act for establishing a general post-office for all her majesty’s dominions, and for settling a weekly sum out of the revenues thereof, for the service of the war, and other her majesty’s occasions.”

12 Car. 2, c.
35.

“Most gracious sovereign, Whereas by an act made in the twelfth year of the reign of his late majesty king *Charles* the Second, a general post-office was erected and established in that part of *Great Britain* called *England*, and by the twentieth act of the fifth session of the first parliament of his late majesty king *William* the Third, a general post-office was erected and established in that part of *Great Britain* called *Scotland*, and several rates of postage were thereby severally appointed to be received, under several different powers and authorities; which two kingdoms being since united, it is most likely that a correspondence by posts will be best managed and ordered for the public good, by uniting also the said two post-offices under one postmaster-general: and whereas also posts have at great charges been established by packet-boats between that part of *Great Britain* called *England* and the *West-Indies*, and also on the main land in *North-America*, through most of her majesty’s plantations and colonies in those parts, as also to divers parts in *Europe*, to which no packet-boats were till lately settled, and more posts may yet be settled and established for the public good and welfare of all your majesty’s subjects: and whereas the several rates of postage may in many parts, with little burthen to the subject, be encreased; and other new rates granted, which additional and new rates may, in some measure, enable your majesty to carry on and finish the present war, so as suitable powers and authorities be made for collecting the same, and sufficient provision be made, as well for preventing the undue collecting and delivery of letters by private post, carriers, higlers, watermen, drivers of stage-coaches, and other persons, as all other frauds to which the revenue might otherwise be liable; which cannot be well and properly done, to answer the ends aforesaid, without authority of parliament in a new act to be made for the said office, and for the revenues to arise thereby: we therefore your majesty’s most dutiful and loyal subjects, the commons in *Great Britain* in parliament assembled, do most humbly beseech your majesty, that it may be enacted; and be it enacted by the queen’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by authority of the same, That the said act made in *England* in the twelfth year of the reign of his said late ma-

Former acts in
England and
Scotland re-
lating to the
post-office re-
pealed.

jesty king *Charles* the Second, [intituled, *An act for erecting and establish- 12 Car. 2. c.*
ing a post-office] and the said act made in *Scotland* in the fifth session of 35.
the first parliament of his said late majesty king *William* the Third, [in-
tituled, *An act anent the post-office*] and every article, clause and thing
therein or in either of them contained, shall be, and is and are hereby,
from and after the first day of *June*, one thousand seven hundred and
eleven, actually repealed, except as is herein after mentioned.

Sett. 2. “ And to the end a general post-office may be established for
and throughout her majesty’s kingdoms of *Great Britain* and *Ireland*, her
colonies and plantations in *North-America*, and the *West-Indies*, and all
other her majesty’s dominions and territories, in such manner as may be
most beneficial to the people of these kingdoms, and her majesty may be
supplied, and the revenue arising by the said office better improved, settled
and secured to her majesty, her heirs and successors, in such manner as is
herein after mentioned; be it enacted by the authority aforesaid, That One general
from and after the said first day of *June*, one thousand seven hundred and post-office to
eleven, there be from thenceforth one general letter-office and post office be erected,
erected and established in some convenient place within the city of *London*,
from whence all letters and packets whatsoever may be with speed and
expedition sent into any part of the kingdoms of *Great Britain* and *Ireland*,
or to *North America*, the *West-Indies*, or to any other of her majesty’s do-
minions or territories, or unto any other kingdom or country beyond the
seas, at which said office all returns and answers may be likewise received;
and that one master of the said general letter-office and post-office shall and one post-
be, from time to time, appointed by the queen’s majesty, her heirs, and master gene-
successors, to be made and constituted by letters patents under the great ral.
seal of *Great Britain*, by the name and stile of her majesty’s postmaster-
general; which said master of the said office, and his deputy and deputies
by him thereunto sufficiently authorized, and his and their servants and
agents, and no other person or persons whatsoever, shall, from time to
time, and at all times, have the receiving, taking up, ordering, dispatch-
ing, sending post, or with speed, carrying and delivering of all letters
and packets whatsoever, which shall, from time to time, and at all or any
times, be sent to and from all and every the parts and places of *Great*
Britain and *Ireland*, *North-America*, the *West Indies*, and other her ma-
jesty’s dominions, and also to and from all and every the kingdoms and
countries beyond the seas, where he shall settle or cause to be settled posts,
or running messengers for that purpose: except such letters as shall respec- Exception.
tively concern goods sent by common known carriers of goods by carts,
waggon, or pack-horses, and shall be respectively delivered with the
goods such letters do concern, without hire or reward, or other profit or
advantage, for receiving or delivering such letters; and except letters of
merchants, and masters, owners of any ships, barques or vessels of mer-
chandize, or any the cargo or loading therein, sent on board such ships,
barques, or vessels of merchandize, whereof such merchants or masters
are owners, as aforesaid, and delivered by any masters of any such ships,
barques, or vessels of merchandize, or by any other person employed by
them.

them for the carriage of such letters aforesaid, according to their respective directions, so as such letters be delivered to the respective persons to whom they shall be directed, without paying or receiving any hire or reward, advantage or profit for the same in any wise; and also except commissions, or the return thereof, affidavits, writs, process, or proceedings or returns thereof, issuing out of any court; and also any letter or letters to be sent by any private friend or friends, in their way of journey or travel, or by any messenger or messengers sent on purpose for or concerning the private affair of any person or persons.

Carriers,
coachmen,
watermen,&c.
not to carry
letters.

Sect. 3. "Provided always nevertheless, That nothing in the said exception contained shall extend or be construed to extend to give any licence or authority to any common known carriers of goods by carts, waggons, or pack-horses, their servants or agents, to receive, collect, or deliver, with or without hire, any letter or letters, packet or packets of letters whatsoever, that do not concern goods in their carts, waggons, or on their pack-horses, nor to any owners or drivers of stage-coaches, nor to any owners, masters or commanders of boats called passage-boats, sailing between any part of *Great Britain* or *Ireland*, and any parts or places beyond the seas, or their servants or agents, nor to any passenger or passengers on board such boats or vessels, nor to the owners or watermen on board of any boat, barge or vessel passing or repassing on any river or rivers, to and from any parts of *Great Britain* and *Ireland*, *North-America*, or the *West-Indies*, or other her majesty's dominions and territories, although such drivers of stage-coaches, owners, masters or commanders of boats called passage-boats, or passengers therein, owners or watermen on board of any such boat, barge, or vessel passing or repassing on any such river or rivers as aforesaid, do not receive any hire or reward, or other advantage for the same; but that all such carriers, owners and drivers of stage-coaches, owners, masters or commanders of passage-boats, and the passengers therein, and all owners and watermen on board of any boat, barge, or vessel passing or repassing on any river or rivers, to or from any the parts and places aforesaid, collecting and delivering letters, as aforesaid, though without hire or reward, shall be deemed and taken, and are hereby declared to be persons offending against this act, and shall forfeit and pay such sum and sums of money, as persons collecting, receiving, taking up, conveying and delivering of letters for hire, or setting up, employing and maintaining any post contrary to this act, or that are or shall be concerned therein, are herein after enacted to forfeit and pay.

Explained as
to penny post
letters by
4 Geo. 2, c.
33.

Sect. 4. "And to the end there may be one chief letter-office also in *North-Britain* and *Ireland*, and at *New-York* in *North-America*, and in the *West-Indies*, from whence the distances for which the rates hereby granted may be computed and settled; be it enacted by the authority aforesaid, That such postmaster general so to be constituted, as aforesaid, shall be at liberty to keep one chief letter office in the city of *Edinburgh*, and one other chief letter-office in the city of *Dublin*, and one chief letter-office in *New-York* aforesaid, and other chief offices at some convenient place or places in each of her majesty's provinces or colonies in *America*, and in each of

A chief letter-office to be erected, at *Edinburgh*, at *Dublin*, and at *New-York*, &c.

of the islands in the *West-Indies*, called the *Leeward-Islands*, and appoint sufficient deputies under him, for the better managing, ordering, collecting, and improving the revenue hereby granted.

Sett. 5. " And be it further enacted by the authority aforesaid, That The post master such postmaster general for the time being, as shall from time to time be ter general, made and constituted by her majesty, her heirs and successors, and the re- and no other, spective deputies or substitutes of such postmaster general, and no other to provide horses for riding post. person or persons whatsoever, shall prepare and provide horses and furniture, to let to hire unto all or any person or persons riding in post, by commission or without, to or from all and every the parts and places of *Great-Britain* and *Ireland*, where any post-roads are, or shall be settled and established.

Sett. 6. " And be it further enacted by the authority aforesaid, That it Rates for carrying letters shall and may be lawful to and for such postmaster general to be consti- in England. tuted and appointed, as aforesaid, and his deputy and deputies by him thereunto sufficiently authorized, to and for the use of her majesty, her heirs and successors, to demand, have, receive and take, for the portage and conveyance of all such letters and packets which he shall so convey, carry, or send post, as aforesaid, and for the providing and furnishing horses for persons riding in post, as aforesaid, according to the several rates and sums of lawful *British* money hereafter mentioned, not to exceed the same: (that is to say) for the port of every single letter, or piece of paper, to or from any place not exceeding eighty *English* miles distant from the said general post-office in *London*, and within that part of *Great Britain* called *England*, and not coming from or directed on ship-board, three pence; and for the like port of every double letter, six pence; and so proportionably By 6 Geo. 1. c. 21, sect. 5. Bills of exchange, and several letters on one paper, are to be charged as distinct letters. unto the said rates for the port of every packet of letters; and for the like port of every packet of writs, deeds, and other things, after the rate of twelve pence of *British* money for every ounce weight; and for the port of every single letter, or piece of paper, to or from any place above eighty such *English* miles distant from the said general post-office, and within that part of the kingdom of *Great Britain*, called *England*, or to the town of *Berwick upon Tweed*, and not coming from or directed on ship-board, four pence; and for the like port of every double letter eight pence; and so proportionably unto the said rates for the port of every packet of letters; and for the like port of every packet of writs, deeds, and other things, after the rate of one shilling and four pence *British* money for every ounce weight: and for the port of every single letter, or Rates for Scotland. piece of paper, from the said general post-office in *London* unto the city of *Edinburgh*, in that part of *Great Britain* called *Scotland*, or from thence to the said general post-office in the city of *London*, and to and from *Dumfries*, or *Cockburnspath*, and between either of those places and the said city of *Edinburgh*, not coming from, or directed on board any ship, six pence; and for the like port of every double letter, twelve pence; and so proportionably unto the said rates, for the port of every packet of letters; and for the like port of every packet of writs, deeds, and other things, after the rate of two shillings *British* money, for every ounce weight; and for

Rates for Ire-
land.

for the port of every single letter, or piece of paper, to or from the chief post-office in the said city of *Edinburgh*, to or from any place not exceeding fifty such *English* miles distant from the said chief post-office in *Edinburgh*, and within that part of the kingdom of *Great Britain* called *Scotland*, and not coming from, or directed on board of any ship or vessel, two pence *British* money; and for the like port of every double letter, four pence, of like money; and so proportionably to the said rates for the port of every packet of letters; and for the like port of every packet of writs, deeds, and other things, after the rate of eight pence *British* money for every ounce weight; and for the port of every single letter or piece of paper, to or from any place above fifty such miles distant from the said chief office in *Edinburgh*, and not exceeding eighty such miles, and within that part of *Great Britain* called *Scotland*, and not coming from, or directed on ship-board, three pence; and for the like port of every double letter, six pence; and so proportionably to the said rates for the port of every packet of letters; and for the like port of every packet of writs, deeds, and other things, after the rate of twelve pence *British* money for every ounce weight; and for the port of every single letter, or piece of paper, to or from any place above eighty *English* miles distant from the said chief office in *Edinburgh*, and within that part of *Great Britain* called *Scotland*, and not coming from, or directed on ship-board, four pence *British* money; and for the like port of every double letter, eight pence; and so proportionably to the said rates for the port of every packet of letters; and for the like port of every packet of writs, deeds, and other things, after the rate of one shilling and four pence *British* money for every ounce weight: and for the port of every single letter, or piece of paper from the said general letter-office in *London*, unto the city of *Dublin* in *Ireland*, or from the said city of *Dublin* in *Ireland*, unto the said general post-office, and not coming from, or directed on board of any ship, six pence of *British* money; and for the like port of every double letter, twelve pence *British* money; and so proportionably unto the said rates for the port of every packet of letters; and for the like port of every other packet of writs, deeds, and other things of greater bulk, two shillings of *British* money for every ounce weight; and for the port of such letters or packets as shall be conveyed, or carried from the chief post-office in the said city of *Dublin*, unto any other place or places within the kingdom of *Ireland*, or from any other place within the said kingdom, not coming from, or directed on ship-board, according to the rates and sums of *British* money hereafter following, (*viz.*) for the port of every single letter from the chief post-office in the said city of *Dublin*, to or from any place not exceeding forty *English* miles distant from the said chief office in *Dublin*, and within the said kingdom of *Ireland*, not coming from, or directed on ship-board, two-pence; and for the like port of every double letter, four pence; and so proportionably unto the said rates for the port of every packet of letters; and for the like port of every other packet of writs, deeds, or other things, after the rate of eight pence for every ounce weight; and for the port of every single letter or piece of paper,

to

to or from any place above forty *English* miles distant from the said chief office in *Dublin*, and within the said kingdom of *Ireland*, and not coming from, or directed on board of any ship or vessel, four pence; and for the like port of every double-letter, eight pence; and so proportionably unto the said rates for the port of every packet of letters; and for the like port of every packet of writs, deeds, and other things, after the rate of one shilling and four pence for every ounce weight: and for the port of all and every the letters and packets of letters directed on board, or fetched or brought from on board any ship or vessel, riding or stopping in any port within her majesty's dominions, the sum of one penny, over and above the rates granted in and by this act; and for the port of all and every the letters and packets, passing or re-passing by the carriage called the penny-post, established and settled within the cities of *London* and *Westminster*, and borough of *Southwark*, and parts adjacent, and to be received and delivered within ten *English* miles distant from the said general letter-office in *London*, one penny: and for the port of all and every the letters, packets and parcels of goods that shall be carried or conveyed to or from any of her majesty's said dominions, to or from any other parts or places beyond the seas, according to the several and respective rates following, the same being rated either by the letter or by the ounce; that is to say,

		s.	d.
All letters and packets coming from any part of <i>France</i> to <i>London</i> . — — — — —	single,	0	10
	double,	1	8
	treble,	2	6
	ounce,	3	4
All letters and packets passing from <i>London</i> , through <i>France</i> , to any part of <i>Spain</i> or <i>Portugal</i> (port paid to <i>Boyoue</i>) and from <i>Spain</i> and <i>Portugal</i> , through <i>France</i> , unto <i>London</i> , — — — — —	single,	1	6
	double,	3	0
	treble,	4	6
	ounce,	6	0
All letters and packets passing from <i>London</i> , through <i>France</i> , to any part of <i>Italy</i> , or <i>Sicily</i> , by the way of <i>Lions</i> , or to any part of <i>Turkey</i> , by the way of <i>Mercelia</i> , and from any of those parts, through <i>France</i> , unto <i>London</i> , — — — — —	single,	1	3
	double,	2	6
	treble,	3	9
	ounce,	5	0
All letters and packets coming from any part of the <i>Spanish Netherlands</i> unto <i>London</i> , — — — — —	single,	0	10
	double,	1	8
	treble,	2	6
	ounce,	3	4
All letters and packets passing from <i>London</i> through the <i>Spanish Netherlands</i> to any part of <i>Italy</i> or <i>Sicily</i> (port paid to <i>Antwerp</i>) and from any part of <i>Italy</i> or <i>Sicily</i> , through the <i>Spanish Netherlands</i> unto <i>London</i> , — — — — —	single,	1	0
	double,	2	0
	treble,	3	0
	ounce,	4	0
All letters and packets passing from <i>London</i> through the <i>Spanish Netherlands</i> to any part of <i>Germany</i> , <i>Switzerland</i> , <i>Denmark</i> , <i>Sweden</i> , and all parts of the north, and from any of those parts through the <i>Spanish Netherlands</i> unto <i>London</i> , — — — — —	single,	1	0
	double,	2	0
	treble,	3	0
	ounce,	4	0

Post-Office.

All letters and packets passing from <i>London</i> through the <i>Spanish Netherlands</i> to any part of <i>Spain</i> or <i>Portugal</i> , and from any part of <i>Spain</i> or <i>Portugal</i> , through the <i>Spanish Netherlands</i> unto <i>London</i> . — — — —	single,	1	6
	double,	3	0
	treble,	4	6
	ounce,	6	0
All letters and packets passing from any part of the <i>United Provinces</i> unto <i>London</i> , — — — —	single,	0	10
	double,	1	8
	treble,	2	6
All letters and packets passing from <i>London</i> through the <i>United Provinces</i> for any part of <i>Italy</i> or <i>Sicily</i> , and from any part of <i>Italy</i> or <i>Sicily</i> , through the <i>United Provinces</i> unto <i>London</i> , — — — —	ounce,	3	4
	single,	1	0
	double,	2	0
	treble,	3	0
All letters and packets passing from <i>London</i> through the <i>United Provinces</i> to any part of <i>Germany</i> , <i>Switzerland</i> , <i>Denmark</i> , <i>Sweden</i> , and all parts of the north, and from any of those parts and places, through the <i>United Provinces</i> unto <i>London</i> , — — — —	ounce,	4	0
	treble,	3	0
	double,	2	0
	single,	1	0
All letters and packets passing from <i>London</i> through the <i>United Provinces</i> unto any part of <i>Spain</i> or <i>Portugal</i> , and from any part of <i>Spain</i> or <i>Portugal</i> , through the <i>United Provinces</i> unto <i>London</i> . — — — —	ounce,	6	0
	treble,	4	6
	double,	3	0
	single,	1	6
All letters and packets passing from <i>London</i> through the <i>Spanish Netherlands</i> , or the <i>United Provinces</i> to <i>Hamburgh</i> (port paid to <i>Antwerp</i> or <i>Amsterdam</i>) and from <i>Hamburgh</i> , through the <i>Spanish Netherlands</i> or the <i>United Provinces</i> unto <i>London</i> , — — — —	ounce,	3	4
	treble,	2	6
	double,	1	8
	single,	0	10
All letters and packets passing between <i>London</i> , <i>Spain</i> , or <i>Portugal</i> , by packet-boats, — — — —	ounce,	6	0
	treble,	4	6
	double,	3	0
	single,	1	6

Here follow the rates of postage between *London* and the British dominions in *America*, and places within the said dominions; but such rates are repealed by 5 Geo. III. c. 25, herein after inserted.

Places where posts are not yet settled, to pay according to these rates.

Foreign letters collected, &c. between *London* and the port whence the packet boat sails, to pay as to or from *London*.

Sect. 7. " And be it enacted by the authority aforesaid, That such postmaster general so to be appointed, as aforesaid, shall and may receive and take, according to the same rates and proportions for the port of letters, packets, and parcels, to or from any of the parts or places beyond the seas, where posts have not been heretofore settled, and may hereafter be settled by such postmaster general for the time being.

Sect. 8. " And be it further enacted, That all letters and packets directed to, or from any of the foreign parts or places aforesaid, and collected or delivered at any part or place between *London* and any of the ports from whence any of her majesty's packet boats shall at any time hereafter sail, or at which they shall or may arrive with the foreign mails, do pay the same rates as if the same were conveyed in the said mails to or from *London*. Sect.

Seet. 9. “ And be it further enacted by the authority aforesaid, That such postmaster general shall be at liberty to keep and maintain packet-boats to go weekly (wind and weather permitting) to and from *Donaghadee*, or some other convenient port in *Ireland*, to *Port-Patrick*, or some other convenient port in that part of *Great-Britain* called *Scotland*, for conveyance of letters and packets for the conveniency of trade and commerce between the said kingdoms, paying over and above the inland rates hereby rated and appointed to be received for such letters and packets, at the place where such letter or letters are delivered in to be sent by such packet-boats, according to the rates following (that is to say) for every such single letter two pence, double four pence, treble six pence, ounce eight pence.

Seet. 10. “ And forasmuch as it may be convenient to erect some cross stages for the better maintaining of trade, and commerce, and mutual correspondencies, and to settle the rates for all by or way-letters and packets conveyed by post in any of the said kingdoms; be it therefore enacted by the authority aforesaid, That from and after the said first day of *June*, one thousand seven hundred and eleven, it shall and may be lawful to and for the postmaster general for the time being, so constituted, as aforesaid, to erect and set up cross stages to and from any place or places whatsoever, and thereupon such postmaster general, and his deputy and deputies by him thereunto sufficiently authorized, shall and may lawfully demand, have, receive, and take for the postage and conveyance, as well of all such letters and packets which he or they shall so convey, carry, or send post, as aforesaid, in any such cross stages as for all by or way letters and packets, the same rates in proportion to the distances of the places to which they shall be directed from the places at which they shall be put in, as letters and packets conveyed and re-conveyed to and from *London*, are rated to pay.

Seet. 11. “ And for the better reducing all miles in both the said kingdoms throughout all the post-roads within one hundred miles distance from the said chief offices, and in the cross-roads now settled, or hereafter to be settled, to one and the same measure and standard; and for preventing disputes touching the same: be it further enacted by the authority aforesaid, That it shall and may be lawful to and for such person and persons as the postmaster general for the time being, shall appoint, to measure, or cause to be measured, by the wheel, all roads, except such roads where stages are already settled; and that such person or persons so to be authorized, shall cause fair surveys or books to be made for each of the said kingdoms; one of each whereof to be left with her majesty’s postmaster general in *London*; another of each to be left at the chief post office in *Edinburgh*, with the postmaster general’s deputy there; another of each to be left at the chief post-office in *Dublin*, with the postmaster general’s deputy there, to remain in the said post-offices; and each of which said books shall be signed by such person or persons making the same, and by the postmaster general for the time being, and his deputies in such general offices in each kingdom, and the comptrollers and surveyors belonging or

to belong to the said general post-offices in *London, Edingburgh, and Dublin*: which books or surveys shall ascertain and determine the distances on all the said roads.

Surveyor to
be sworn.

Sect. 12. “ Provided always, That such person or persons who shall be authorized to measure the said distances, and every of them, shall be sworn to perform the same, according to the best of their skill and judgment; which oath shall and may be administered by any of her majesty’s justices of the peace in the said kingdoms respectively, who shall make a certificate thereof in writing, to be entered in the three general post-offices aforesaid, without fee or charge.

Proviso for
merchants,
by 6 Geo. I.
c. 21, sect 52.
This proviso
is restrained to
merchants ac-
counts, &c.
sent beyond
sea, &c.
Rates for
riding post.

Sect. 13. “ Provided always, That all merchants accounts not exceeding one sheet of paper, and all bills of exchange, invoices, and bills of lading, are, and shall hereby be understood to be allowed without rate in the price of the letters; and likewise the covers of letters, not exceeding one fourth part of a sheet of paper, sent by the way of *Vienna, Marseilles, Venice, or Legborne*, to be sent to or from *Turkey*, shall be understood to be allowed to pass without rate or payment for the same.

Sect. 14. “ And in regard the said postmaster general and his deputies are obliged, as well for performing the duties of the several stages of *Great-Britain and Ireland*, as for furnishing such as ride post with horses and furniture, to be at great charge to maintain a convenient number of servants, horses and furniture; be it enacted by the authority aforesaid, That it shall and may be lawful, to and for such postmaster general and his deputy and deputies, to ask, demand, take and receive of every person, that he or they shall furnish and provide with horses and furniture, or with horses, furniture and guide, to ride post in any of the post-roads, as aforesaid, three pence of *British* money for each and every horse-hire or postage for every *English* mile, and four pence of like money for the person riding as guide for every stage; and the deputy or deputies of such postmaster general, shall not charge any person riding post, for the carrying of any bundle or parcel of goods, carried along with them, in their way of travel, so as any such bundle or parcel of goods, do not exceed the weight of eighty pounds *Averdupois*, to be laid on the horse rid by the guide, and no deputy shall be obliged to carry above that weight for any person riding post.

Sect. 15. “ And whereas, upon the arrival of ships from parts beyond the seas, into several ports within her majesty’s dominions, many letters directed to several merchants and others, have been either embezilled or long detained, to the great damage of the merchants and others, to whom the same were directed, in want of that speedy advice and intelligence, which they might have had, if the same had been forthwith dispatched by the settled posts, and sometimes such letters have been delivered by the masters or passengers of such ships, to ignorant and loose hands that understand not the ways and means of speedy conveyance and delivery of letters, whereby great prejudice hath accrued to the affairs of merchants and others, as well by the miscarriage of many letters so brought, as oftentimes by the opening the same, to the discovery of the correspondency and

and secrets of the merchants; be it therefore further enacted by the authority aforesaid, That all letters and packets, that by any master of any ship or vessel, or any of his company, or any passengers therein, shall or may be brought to any port-town, or which shall arrive or touch at any port belonging to any port-town, within any her majesty's dominions, or any the members thereof, or which shall be on board any ship or vessel, that shall or do touch or stay at any such port-town (other than such letters as are before excepted, or may be sent by common known carriers in manner aforesaid, or by a friend, as aforesaid) shall, by such master, passenger, or other person or persons, be forthwith delivered unto the deputy or deputies only of such postmaster general for the time being, by him appointed, for such place or port town, and to be by such deputy or deputies, sent post unto the said general post-office, to be delivered according to the several and respective directions of the same, upon pain of forfeiting the sum of five pounds of *British* money, for every several offence against the tenor of this present act.

Seet. 16. " And for the encouragement of all such masters of ships or vessels, or such other persons, on their arrival at such ports, as aforesaid, from any parts beyond the seas, to deliver unto the deputy or deputies of such postmaster general for such place or port town at which they shall so touch or arrive, all such letters and packets as they shall respectively have on board such vessel or vessels, every such master or other person, for every letter or packet of letters he or they shall so deliver unto such deputy or deputies, shall receive the sum of one penny of such deputy or deputies, he or they signing a certificate of the number of letters delivered, and by what vessel they came, and of the time when he or they delivered the same unto such deputy or deputies, and giving a receipt for such number of pence he or they shall receive of such deputy or deputies; which certificate and receipt shall be by such deputy by the next post returned to the said postmaster general, together with the letters so delivered, who shall have credit on his account for so much money as any such deputy shall pay on that account.

Seet. 17. " And be it further enacted by the authority aforesaid, That no person or persons whatsoever, or body politick or corporate, in any part of these kingdoms of *Great-Britain* and *Ireland*, or other his majesty's plantations and colonies in the *West-Indies* and *America*, other than such postmaster general as shall, from time to time, be nominated and appointed by her majesty, her heirs and successors, and constituted by letters patents under the great seal of *Great Britain*, as aforesaid, and his deputy and deputies, or assigns, shall presume to receive, take up, order, dispatch, convey, carry, recarry, or deliver any letter or letters, packet or packets of letters (other than as before excepted) or make any collection of letters, or set up or employ any foot-post, horse-post, or packet-boat, or other vessel or boat, or other person or persons, conveyance or conveyances whatsoever, for the receiving, taking up, ordering, dispatching, conveying, carrying, recarrying, or delivering any letter or letters, packet or packets of letters, by sea or by land, or on any river within her majesty's

At port-towns deputy post-master to receive all letters from on board ships, &c.

And to give the bringer a penny a letter, &c.

None to carry letters, &c. but the post-master general, or his deputies,

or provide
horses for
riding post.

Penalty.

majesty's dominions, or by means whereof any letter or letters, packet or packets of letters, shall be collected, received, taken up, ordered, dispatched, conveyed, carried, recarried, or delivered, by sea or land, or on any river within her majesty's dominions (other than as before excepted;) or shall presume to keep, provide, and maintain horses, or furniture for the horsing of any person or persons riding post, that is to say, riding several stages upon a post-road, and changing horses, or shall let to hire, or furnish any person or persons whatsoever with horses or furniture for riding post, as aforesaid, on any of the post-roads or stages now or hereafter to be appointed, with or without a guide or horn, for hire or reward, or on any agreement or promise of reward, or whereby he or they may have any profit or advantage; on pain of forfeiting the sum of five pounds of *British* money for every several offence against the tenor of this present act, and also of the sum of one hundred pounds of like *British* money for every week that any offender against this act shall collect, receive, take up, order, dispatch, convey, carry, recarry, or deliver any letter or letters, packet or packets of letters, by sea or land, or on any river within her majesty's dominions (other than as before excepted) or that shall presume to set up, continue, or employ any foot-post, horse-post, or packet-boat, or other vessel or boat, or any other person or persons, conveyance or conveyances whatsoever, for the receiving, taking up, ordering, dispatching, conveying, carrying, recarrying, or delivering of any letter or letters, packet or packets of letters, by sea or land, or on any river within her majesty's dominions, as aforesaid.

Deputy post-
master to ac-
count for by
or way-let-
ters.

Stat. 18. " And whereas divers deputy postmasters do collect great quantities of post-letters called by or way-letters, and by clandestine and private agreements amongst themselves, do convey the same post in their respective mails, or by-bags, according to their several directions, without accounting for the same, or endorsing the same on their bills, to the great detriment of her majesty's revenues: for preventing whereof for the time to come, be it enacted by the authority aforesaid, That if at any time hereafter, any person or persons employed as a deputy postmaster, or otherwise, in these kingdoms of *Great-Britain* and *Ireland*, or in any of her majesty's dominions and territories in the *West-Indies*, or in *North-America*, shall not duly answer and account to her majesty, her heirs and successors, for all such by or way-letters as such deputy or deputies, or any by his, her, or their order shall receive the post for, or that shall not on his or her post-bills exactly mention all the by or way-letters he, she, or they shall or do receive, or which shall come to his, her, or their hand or hands, custody or power, distinguishing them severally, whether single, double, treble, or ounce weight, or that shall destroy or embezzle any such by-letter or by-letters, packet or packets of letters, every such person so offending shall forfeit and pay for every such offence, such penalties and forfeitures as the persons herein before prohibited, setting up or employing other posts, or collecting, carrying, recarrying, ordering, dispatching, or delivering letters and packets, contrary hereunto, are enacted to forfeit and pay.

Stat.

Sec. 19. " And it is hereby enacted, That all and singular the said ^{Penalties how} several penalties and forfeitures by this act imposed on any offender or ^{to be recover-} offenders against the same, or any part thereof, shall and may be sued for ^{ed.} and recovered by action or actions of debt, bill, plaint, or information, in any of her majesty's courts of record, wherein no essoin, privilege, protection, or wager at law shall be admitted; and the said several and respective penalties and forfeitures, that shall happen from time to time to be recovered, shall be and remain, the one moiety thereof to her majesty, her heirs and successors, and the other moiety thereof to such person or persons who shall or will inform against such offender or offenders against this present act, and shall and will sue for the said penalties and forfeitures upon the same; and on every such recovery, such person or persons so informing, and prosecuting for the said penalties and forfeitures, shall recover, and have also taxed and paid, their full costs of suit.

Sec. 20. " Provided always, That if any postmaster of any respective ^{Proviso when} stages on any post-roads, in any her majesty's dominions, now settled, or ^{postmaster} hereafter to be settled, doth not or cannot furnish any person or persons ^{doth not fur-} riding in post, with sufficient horses within the space of one half hour after ^{nish horses in} demand, that then such person or persons is and are hereby understood to ^{one half hour.} be left at liberty to provide themselves as conveniently as they can to the next stage, and so at every stage where he or they shall not be furnished, as aforesaid; and the person and persons who shall furnish such horses, shall not therefore be liable to any penalties or forfeitures contained in this act, by reason thereof.

Sec. 21. " Provided always, That if through default or neglect of the ^{Penalty on} postmaster general, or his deputy for the time being, any person or persons ^{postmaster} riding in post, shall fail, as aforesaid, of being furnished with a sufficient ^{not provid-} horse or horses, for his or their use after demand, as aforesaid, that then ^{ing.} and in every such case the postmaster general or his deputy, so offending, shall forfeit the sum of five pounds sterling; the one moiety to her majesty, her heirs or successors, and the other moiety to him or them who shall sue for the same, in any court of record, to be recovered and divided, as aforesaid.

Sec. 22. " Provided always, and be it further enacted, That nothing ^{Letters may} herein contained shall be understood to prohibit the carrying, or re-carry- ^{be sent from} ing of any letters or packets, to or from any town or place to or from ^{any place, to} the next respective post road or stage appointed for that purpose, above ^{the next stage:} six miles from the said general post-office, or the chief offices of *Edinburgh* ^{above six} and *Dublin*, but that every person shall have free liberty to send and em- ^{miles from} ploy such person or persons as they shall think fit to carry the said letters ^{the general} or packets, as aforesaid, without any forfeiture or penalty therefore; any ^{post-office.} thing herein contained to the contrary notwithstanding.

Sect. 23. " Provided always nevertheless, that nothing herein contained, ^{None may} shall be construed to extend to give licence to any person or persons what- ^{collect letters} soever, to make collection of letters in or near the city of *London*, or suburbs ^{in London,} thereof, under pretence of conveying the same to any parts or places in the ^{&c. without} said city or suburbs, or to the general office of the said city, without the ^{licence, &c.} licence.

licence and leave of the postmaster general for the time being: and any person or persons acting contrary hereunto shall forfeit and pay as persons collecting, receiving, carrying, re-carrying, and delivering letters contrary to this act, are hereby enacted to forfeit and pay, to be recovered, as aforesaid, and with full costs of suit.

The packet
not to be car-
ried out of
Great-Britain
in foreign
ships.

Sec. 24. " Provided always, That if the packet or mail shall be carried out of *Great-Britain* into any part or place beyond the seas, in any ship or vessel which is not a free ship, and navigated with such seamen as, by the laws of the land, the same are required to be, that then, and in every such case, the postmaster general for the time being, shall forfeit the sum of one hundred pounds sterling, the one moiety to her majesty, her heirs and successors, and the other moiety to him or them who shall sue for the same in any court of record, to be recovered by bill, plaint, or other information, wherein no essoin, protection, or wager at law shall be allowed.

Postmaster,
&c. how to
qualify him-
self.

Sec. 25. " Provided always and be it enacted by the authority aforesaid, That such post-master general, and all officers and deputies acting under him, and all officers belonging to the said general post office, within that part of the said united kingdom called *England*, receiving the sacrament according to the usage of the church of *England*, and taking, making, and subscribing the test, and the oaths of allegiance and supremacy, and abjuration, appointed by any of the laws of the said part of the said united kingdom, to be taken, made, and subscribed by officers in public places of trust in the government, and within such times, and in such places as are particularly appointed by any of those laws for doing the same, shall be deemed and taken to be sufficiently qualified to act in their respective stations and duties, and to execute their respective employments throughout the said whole united kingdom, and all other her majesty's dominions, and shall not incur any penalties, forfeitures, or disabilities, for not taking the oaths of allegiance and abjuration, and subscribing the assurance appointed by any the laws of that part of the said united kingdom called *Scotland*, or by any law or laws of the said united kingdom of *Great Britain*, to be taken and made by any person in public trust, notwithstanding such post-master general, and such deputies and officers, shall exercise their respective offices or employments within all and every the parts and places of that part of the said united kingdom called *Scotland*: and all deputies and agents acting under such postmaster general within that part of the said united kingdom called *Scotland*, taking and making the oaths of allegiance, and abjuration, and subscribing the same, with the assurance appointed by any of the laws of the said part of the said united kingdom called *Scotland*, or by any law or laws of the said united kingdom of *Great Britain*, to be taken and made by any person in public trust, and within such times, and at such places, as are particularly appointed by any of those laws for doing the same, shall be deemed and taken to be sufficiently qualified to execute and exercise their respective employment, in the said office throughout the said whole united kingdom, and all other her majesty's dominions; any act or acts of parliament in

the

either of the said united kingdoms at any time heretofore made to the contrary thereof in any wise notwithstanding.

Señ. 26. " Provided also, and be it enacted by the authority aforesaid, ^{Proviso for} That a letter or packet-post shall thrice every week come by the way of *Truro*, *Penryn*, *Kendal*, *Penrith*, &c. and once a week to *Kendal*, by the way of *Lancaster*; and to the town of *Penrith* in *Cumberland*, by the way of *New-castle* and *Carlisle*; and to the city of *Lincoln* and the borough of *Grimby*, in the county of *Lincoln*; any thing in this act contained to the contrary thereof in any wise notwithstanding.

Señ. 27. " And for the better management of the said post-office, and that the people of these kingdoms may have their intercourse of commerce and trade the better maintained, and their letters and advices conveyed, carried, and re-carried, with the greatest speed, security, and conveniency that may be; be it further enacted by the authority aforesaid, That the said postmaster-general so nominated, appointed, and constituted, as aforesaid, and his deputies, shall, from time to time, observe and follow such orders, rules, directions, and instructions for and concerning the settlement of posts and stages upon the several roads in *Great-Britain* and *Ireland*, and other her majesty's dominions, and the providing and keeping a sufficient number of horses at the said several stages, as well for the carrying and conveying the said letters and packets, as for the horsing of all persons riding in post by warrant, or otherwise, as aforesaid, as her majesty, her heirs and successors, shall, from time to time, in that behalf make and ordain.

The post-master, to observe such orders as her majesty shall make.

Señ. 28. " Provided always, and be it enacted by the authority aforesaid, That no person or persons shall have power to take, use, or seize any horses for the service mentioned in this act, without the consent of the owner or owners thereof; any law, statute, usage, or custom to the contrary thereof in any wise notwithstanding.

No horses to be seized without the owners consent.

Señ. 29. " And forasmuch as the post must necessarily pass several ferries in *North-America*, in which the ferrymen give great delays, and sometimes have endeavoured to exact money from them, notwithstanding the same have always been free for the post; be it therefore enacted by the authority aforesaid, That no deputy or agent of such postmaster general, travelling with any mail of letters, shall pay any thing for passing or repassing any ferry within any of the colonies or plantations of her said majesty in *North-America* aforesaid; but such ferrymen shall forthwith within one half hour after demand, convey such deputies, on pain of forfeiting for every offence the sum of five pounds, to be recovered in any court of record within any of the provinces or colonies in *North-America*, by bill, plaint, or information, wherein no essoin, protection, or wager of law shall be allowed; one moiety thereof to her majesty, her heirs and successors, towards the support of the government of the said provinces, and the contingent charges thereof; and the other moiety to the postmaster-general, who shall sue and prosecute for the same, together with full costs of suit.

Post to pay nothing for passing ferries in North-America.

Debts for
postage to be
recovered as
small tithes
are.

7 & 8 W. 3.
c. 6.

Inland letters
to pay where
delivered.

Proviso for
the two uni-
versities.

By-bags for
by-letters.

Sum due on
1 June, 1711,
how recover-
able.

Sec. 30. " And whereas many persons having received their letters, refuse to pay for the same, or often run in debt for the postage of their letters, or having received some small sum for the port of letters, which sums being very small in particulars, are properly to be recovered in a summary way; be it therefore enacted by the authority aforesaid, That all sum and sums of money, not exceeding five pounds, that now is, or shall be due from any person or persons for letters or packets, or any letter or packet to them delivered by any deputy or deputies of such postmaster general, or which now is, or shall be due from any person or persons for the port of letters or packets to them delivered by any deputy or agent of such postmaster general, not exceeding the said value, or which have been, or shall be received for the port of letters, not exceeding the same value, without answering or paying the monies so due and owing to the receiver general of the said revenues for her majesty's use, shall be recovered before justices of the peace, in the same manner, and under the same rules, as small tithes are, by the laws of *England*, to be recovered; and such debt or sums of money shall be preferable in payment by the person owing the same, or from whose estate the same is or shall be due, before any debt of any sort to any private person whomsoever.

Sec. 31. " And be it further enacted by the authority aforesaid, That all inland letters sent by any packet-post established by this act, as aforesaid, do and shall pay the rates and prices before mentioned at such stages, at which they are last delivered only, unless the party that doth put in the letters desireth to pay elsewhere, and unless any such letters are directed on board any ship or vessel, or to any person in the army, or are sent by the penny-post, and unless they be letters or packets going out of *Great-Britain*, which have usually paid the rates in *England*; any thing in this act contained to the contrary thereof in any wise notwithstanding.

Sec. 32. " Provided always, That this act, or any thing therein contained, shall not in any wise be prejudicial to the privileges of the two universities of *Oxford* and *Cambridge*, or either of them, or to the chancellors or scholars of the same, or their successors, but that they may use and enjoy such privileges as heretofore they have lawfully used and enjoyed, and that all letters and other things may be sent or conveyed to or from the said two universities in manner as heretofore hath been used; any thing herein to the contrary notwithstanding.

Sec. 33. " Provided always, That it shall and may be lawful to and for the postmaster general for the time being, his deputy and deputies, to continue by-bags for collecting and delivering of by-letters as hath been heretofore accustomed; such deputy and deputies duly accounting to, and paying the respective parts thereof to the receiver general of the said revenue for the time being, for the use of her majesty, her heirs, and successors.

Sec. 34. " Provided always, and be it further enacted by the authority aforesaid, That all and every sum and sums of money which shall or may be due and owing to her majesty on the said first day of *June*, one thousand seven hundred and eleven, for the duties and revenues that have arisen,

or

or shall or may arise to that time by posts, or by reason of the duties and revenues granted by either of the said former acts, shall be paid to the receiver general of the said revenue, for her majesty's use, and be recovered and recoverable in such manner, and by such ways and means, as the same were recoverable before the making of this present act; any thing herein contained to the contrary thereof in any wise notwithstanding.

Sec. 35. " And towards the establishment of a good, sure, and lasting fund, in order to raise a present supply of money for carrying on the war and other her majesty's most necessary occasions, be it further enacted by the authority aforesaid, That from and after the twenty-ninth day of *September*, one thousand seven hundred and eleven, for and during the whole term of thirty-two years from thence next and immediately ensuing, the full, clear, and entire weekly sum of seven hundred pounds of lawful money of *Great-Britain*, out of all the duties and revenues, from time to time, arising by virtue of this act, shall be brought and paid by the postmaster general, the receiver general of the post-office, or such other person or persons who, for the time being, shall have the receipt of the said duties and revenues, who are hereby respectively enjoined and required to bring and pay the same accordingly into the receipt of the exchequer, upon *Tuesday* in every week, if it be not an holy-day, and if it be, then upon the next day that is not an holy-day, as one week shall successively and immediately follow and succeed another; and in case in any week or weeks the whole receipt of the monies of the said duties or revenues hereby charged, as aforesaid, shall not be sufficient to answer the said weekly payment or payments hereby directed for such particular week or weeks, that then and so often the deficiency and deficiencies thereof shall be supplied and made good out of the whole receipt of the said duties or revenues arising in the next week or weeks, when the receipt or receipts shall be sufficient to bear the same; all which payments into the exchequer shall be made for the purposes, and under the penalties, forfeitures, and disabilities hereafter in this act expressed.

Sec. 36. " And it is hereby further enacted by the authority aforesaid, That the postmaster general for the time being, at the head office in *London*, shall, from time to time, cause an account to be kept by an accountant general of all the monies arising by virtue of this act, of or for the duties or revenues aforesaid, and every or any of them, as the same shall, from time to time, arise, be paid or brought into the said office, to the hands of the receiver general for the time being, who is or shall be appointed, from time to time, to receive the same, and that such receiver general for the time being, shall, out of the monies so arising, make the said weekly payments into the exchequer, in manner, as aforesaid; and if the said postmaster general for the time being, shall refuse or neglect to appoint or keep such accountant general, or if such accountant general shall neglect to keep a just and true account, as aforesaid, or if such receiver general shall at any time refuse or neglect to make any such weekly payments, as aforesaid, into the exchequer, according to the true meaning of this act, or if the said postmaster general, accountant general and receiver

After 29 September, 1711, for 32 years, 700l. to be paid weekly into the exchequer out of the post-office. Made perpetual by 3 Geo. 1. c. 7, sect. 1. This money how appropriated, 9 Annæ, c. 23, sect. 54.

Accountant general, and receiver general's duty.

ceiver general for the time being, or any of them, or any other officer of the said duties, shall divert or misapply any of the monies which should make good the said weekly payments, or any of them, or any part thereof, contrary to the tenor and true meaning of this act, at any time or times, during the said term of thirty-two years, then and in any such case they and every of them so offending shall forfeit their several offices and places, and be incapable to serve the queen, her heirs or successors, in any office or place of trust or profit, and shall be liable, for every such offence, to pay double the value of the money so diverted or misapplied, to any person or persons who shall or may be grieved by reason of such offence, and will inform or sue for the same by action of debt, or of the case, bill, suit, or information, in any of her majesty's courts of record at *Westminster*, wherein no essoin, protection, wager of law, or more than one imparlance shall be granted or allowed.

A book to be kept in the exchequer, for the weekly payments.

Sett. 37. "And to the end the said weekly sum of seven hundred pounds may be made a fund or security for the purposes in this act expressed, be it further enacted by the authority aforesaid, That there shall be provided and kept in the office of the auditor of the receipt of the exchequer, one book, in which all the monies which shall be paid in weekly, as aforesaid, for or upon account of the said weekly sums out of the said duties, shall be entred apart and distinct from all other monies which shall be brought and paid to the said receipt upon any other account whatsoever.

Appropriation of the 700l. a week.

Sett. 38. "Provided always, and it is hereby enacted, That the said weekly sum of seven hundred pounds for the purposes aforesaid, shall, from time to time, during all the said term of thirty-two years, be paid into the exchequer, as aforesaid, out of the whole produce of the duties and revenues arising by virtue of this act, with preference to all other payments which are, shall, or may be charged or chargeable thereupon, the necessary charges for managing the said post-office, and the duties thereof, and for receiving, answering, and accounting for the revenues arising thereby, only excepted; and that the said duties and revenues arising by this act, (after deduction, from time to time, to be first made of so much as shall be then due and incurred, or in arrear of or for the said weekly payments, at any time within or during the term aforesaid, and after the allowance of such necessary charges, as aforesaid, and not otherwise) shall, from time to time, be subject and liable to such annuities, and other payments and incumbrances, which by any act of parliament now in force were lawfully charged upon the revenues of the post-office, or any of them granted by the said former acts hereby repealed, as aforesaid, or which having been charged by any grant upon the said revenues, have been saved by act of parliament, of and for such estate and estates in possession, reversion, or remainder, and subject to such conditions, limitations, restrictions, and appointments, and in such or the like manner and form, (and not otherwise) as the said revenues, payable by the said former acts, or any of them, would have been subject or liable if this act had not been made; any thing herein contained to the contrary notwithstanding.

This revenue liable to all annuities, grants, &c. charged upon the former acts.

Sect. 39. “ Provided always, and be it further enacted by the authority After 1 June, 1743, the old rates to be taken for letters, &c. aforesaid, That from and after the first day of *June*, one thousand seven hundred forty and three, the same rates and prices only, and no more, shall be taken or paid for the carriage, conveyance, and delivery of all letters and packets sent by the post from one part of *Great-Britain* to another, as also for all letters brought to *Great-Britain*, or sent from thence or to any parts beyond the seas, than were authorized or allowed to be taken by the postmaster general, or his deputy or deputies, for the postage of such letters, by the said several acts hereby repealed.

Sect. 40. “ And whereas abuses may be committed by wilfully opening, imbezilling, detaining, and delaying of letters or packets, to the great discouragement of trade, commerce, and correspondence: for prevention thereof, be it enacted by the authority aforesaid, That from and after the said first day of *June*, one thousand seven hundred and eleven, no person or persons shall presume wittingly, willingly, or knowingly to open, detain, or delay, or cause, procure, permit, or suffer to be opened, detained, or delayed, any letter or letters, packet or packets, after the same is, or shall be delivered into the general, or other post-office, or into the hands of any person or persons employed for the receiving or carrying post-letters, and before delivery to the persons to whom they are directed, or for their use; except by an express warrant in writing under the hand of No letters to be open'd, detained, or delayed. one of the principal secretaries of state for every such opening, detaining or delaying; or except in such cases where the party or parties, to whom such letter or letters, packet or packets, shall be directed, or who is or are hereby chargeable with the payment of the port or ports thereof, shall refuse or neglect to pay the same; and except such letters or packets as shall be returned for want of true directions, and where the party, to whom the same is or are directed, cannot be found; and that every person or persons offending in manner aforesaid, or who shall imbezil any such letter or letters, packet or packets, shall for every such offence forfeit the sum of twenty pounds; the said penalties for any such offence committed in *England, Wales, or Berwick upon Tweed*, to be recovered by action, bill, plaint, or information in any of her majesty's courts of record at *Westminster*; and for any such offence committed in that part of *Great Britain* called *Scotland*, to be recovered in the court of sessions or exchequer there; such penalties respectively to be recovered by such person or persons as will inform or sue for the same, together with full costs of suit; and over and above such penalty, as aforesaid, every such person or persons so offending, as aforesaid, shall be for ever incapable of having, using, exercising, or enjoying any office, trust, or employment in or relating to the post-office, or any branch thereof. Exception.

Sect. 41. “ And be it further enacted by the authority aforesaid, That Postmaster, &c. to be sworn. no person or persons shall, after the said first day of *June*, one thousand seven hundred and eleven, be capable of having, using, or exercising the office or offices of post-master general, or any part thereof, or any other employment, relating to the post-office, or any branch thereof, or be any way concerned in receiving, sorting, or delivering of letters or packets, unless

unless such person or persons shall first have taken the following oath before some one justice of the peace for the county or place where such person resides, which said oath such justice of peace is hereby authorized to administer in the following words.

The oath.

I *A. B.* do swear, That I will not wittingly, willingly, or knowingly open, detain, or delay, or cause, procure, permit, or suffer to be opened, detained, or delayed any letter or letters, packet or packets, which shall come into my hands, power, or custody, by reason of my employment in or relating to the post-office; except by the consent of the person or persons to whom the same is or shall be directed, or by an express warrant in writing under the hand of one of the principal secretaries of state for that purpose; or except in such cases, where the party or parties to whom such letter or letters, packet or packets shall be directed, or who is or are hereby chargeable with the payment of the port or ports thereof, shall refuse or neglect to pay the same; and except such letters or packets as shall be returned for want of true directions, or when the party or parties to whom the same is or shall be directed, cannot be found: and that I will not any way imbezil any such letter or letters, packet or packets, as aforesaid.

One third, of the surplus, over and above 111461l. per ann. and 700l. per week, disposable by parliament.

Sect. 42. " And it is further enacted and declared by the authority aforesaid, That from the said first day of *June*, in the year of our Lord one thousand seven hundred and eleven, one third part of the surplus of the yearly produce arising by the said letter or post-office, or duties upon postage of letters and packets by this act granted, over and above the sum of one hundred and eleven thousand four hundred sixty-one pounds, seventeen shillings and ten pence, which was the amount of the gross receipt of the duties arising by virtue of the said former acts of parliament, (which are now repealed) for one year ended the nine and twentieth day of *September*, in the year of our Lord one thousand seven hundred and ten, and over and above the said sum of seven hundred pounds per week, shall be, and is by this act reserved to the disposal of parliament for the use of the public, and shall not be divertible or diverted into any other use, intent, or purpose, other than according to such disposal.

This revenue not alienable &c.

Sect. 43. " And to the intent the inheritance of such part of the said duties and revenue arising in and by the said general letter-office or post-office, which is hereby vested in her majesty, her heirs and successors, undeterminable, as aforesaid, may be preserved in the crown, for the future benefit thereof; be it further enacted and declared by the authority aforesaid, That the same, or any part thereof, shall not hereafter be alienable, chargeable or grantable by her majesty, her heirs or successors, for any estate, term, or time whatsoever, to endure longer than the life of her majesty, or of such king or queen as shall make such alienation, charge, or grant respectively; and that all gifts, grants, alienations and assurances whatsoever to be had, or made of, and charges upon the said duties or revenue, or any part thereof, contrary to the provision of this act,

act, shall be null and void, without any inquisition, *scire facias*, or other proceeding to determine or make void the same.

Sect. 44. “ And be it further enacted by the authority aforesaid, That no postmaster or postmasters general, or his or their deputy or deputies, or any person employed by or under him or them, in the receiving, collecting, or managing the revenue of the post-office, or any part thereof, shall, by word, message, or writing, or in any other manner whatsoever, endeavour to persuade any elector to give or diswade any elector from giving his vote for the choice of any person to be a knight of the shire, citizen, burghers, or baron of any county, city, borough or cinque-port, to serve in parliament; and every officer or other person offending therein, shall forfeit the sum of one hundred pounds; one moiety thereof to the informer, the other moiety to the poor of the parish where such offence shall be committed, to be recovered by action of debt, bill, plaint, or information in any of her majesty’s courts of record at *Westminster*, or in the court of exchequer in *Scotland*, for the said offences committed in *England* and *Scotland* respectively, wherein no essoin, protection, or wager of law, or any more than one imparlance shall be allowed; and every person convicted on any such suit of the said offence, shall thereby become disabled and incapable of ever bearing or executing any office or place of trust whatsoever under her majesty, her heirs or successors.”

No officer in the post office to intermeddle in elections.

STAT. 6 Geo. 1, c. 21, [A. D. 1719, intituled] “ An act for preventing frauds and abuses in the public revenues of excise, customs, stamp-duties, post-office, and house-money.”

Sect. 51. “ An whereas by an act made in the ninth year of the reign of her said late majesty queen *Anne*, [intituled, *An act for establishing a general post-office for all her majesty’s dominions, and for settling a weekly sum out of the revenues thereof, for the service of the war, and other her majesty’s occasions*]; the postmaster general is authorized to demand, have, receive, and take, for single letters or pieces of paper, to and from the general post-office in *London*, to and from any parts or places of *Great Britain*, the kingdom of *Ireland*, or other his majesty’s dominions, certain rates in the same act mentioned, for the port of every single letter or piece of paper: and whereas bills of exchange are frequently sent wrote on one and the same piece of paper with a letter, and also several letters to several and distinct persons are sent wrote upon one and the same piece of paper: be it declared by the authority aforesaid, That it was and is the intent and meaning of the same act, that every such bill, and every such letter, should be rated, taxed, and paid for as so many several and distinct letters, according to the rates within the same act mentioned. And be it enacted by the authority aforesaid, That the same shall be accordingly rated, taxed, and paid for, as so many several and distinct letters, according to the rates within the same act mentioned.”

Bills of exchange wrote on the same piece of paper with a letter, to be rated as so many distinct letters.
9 Ann. c. 10.

Sect. 52. “ And whereas by the same act it is, amongst other things, provided, That all merchants accounts, not exceeding one sheet of paper, and

9 Ann. c. 10, s. 13.
Merchants accounts

counts, bills of exchange, invoices, &c. write on one sheet of paper, to extend only to such letters sent to foreign parts.

and all bills of exchange, invoices, and bills of lading, are and shall be thereby understood to be allowed without rate in the price of the letter : and whereas some doubts have been made touching the said clause and proviso : be it therefore enacted and declared by the authority aforesaid, That it was and is the intent and meaning of the act last mentioned, and of these presents, that the said proviso and allowance shall extend to such merchants accounts, bills of exchange, invoices, and bills of lading only, as shall be sent to or from the said general post-office in *London*, to or from any parts or places beyond the seas, not within his majesty's dominions ; and that all other merchants accounts, bills of exchange, invoices, and bills of lading, shall be rated, taxed, and paid for as so many several letters, according to the rates in the same act mentioned, and the true intent and meaning of these presents."

STAT. 4 Geo. 2, c. 33, [*A. D. 1731, intituled*] " An act for obviating a doubt which hath arisen concerning the usual allowance made upon the delivery of letters sent by the penny-post to places out of the cities of *London* and *Westminster*, and borough of *Southwark*, and the respective suburbs thereof."

" Whereas upon the first establishment of the office called the Penny Post-Office, the carriage or conveyance of the letters by that post was confined to the cities of *London* and *Westminster*, the borough of *Southwark*, and the respective suburbs thereof ; and whereas upon the application of the inhabitants of several towns and places within the compass of ten miles round the city of *London*, and upon their voluntary offer to allow and pay to the messengers, or persons carrying or transmitting such letters, in consideration of their being obliged to travel with an horse to places at that distance, one penny upon the delivery of every letter directed to any person at any place out of the cities of *London* and *Westminster*, and borough of *Southwark*, and the respective suburbs thereof, over and above the penny paid upon putting every such letter into the penny post office in *London*, the carriage and conveyance of letters and packets by the said post, commonly called the penny post, was extended ten miles round the city of *London*, and one penny hath been constantly allowed to, and taken by such messengers, on the delivery of every letter directed to any person at any place out of the cities of *London* and *Westminster*, the borough of *Southwark*, and the respective suburbs thereof, over and above the penny paid upon putting such letter into the penny post office in *London* ; and whereas, by reason of the provisions contained in an act of parliament made in the ninth year of the reign of her late majesty queen *Anne*, intituled, *An act for establishing a general post office for all her majesty's dominions, and for settling a weekly sum out of the revenues thereof for the service of the war, and other her majesty's occasions*, some doubts have lately arisen, whether the messengers, or persons carrying or transmitting such letters, could lawfully receive and take the said allowance of one penny, upon the delivery of every letter, directed or delivered to or for any person, at any

9 Annæ, c. 10.

place out of the cities of *London* and *Westminster*, the borough of *Southwark*, and the respective suburbs thereof, over and above the penny paid upon putting such letter into the penny post office in *London*; for obviating and taking away all such doubts, be it declared and enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That nothing in the said act of the ninth year of her said late majesty's reign shall or ought to be construed to extend to restrain or hinder any such messenger, or person carrying or transmitting letters by the said post, commonly called the penny post, from demanding or taking for every letter originally sent by the penny post, and not first passing by the general post, and from thence transmitted by the penny post, which hath been or shall be delivered to or for any person, at any place out of the cities of *London* and *Westminster*, the borough of *Southwark*, and the respective suburbs thereof, one penny, over and above the penny paid upon putting every such letter into the penny post office, and that no such messenger, or other person, shall incur, or shall be deemed, adjudged, or taken to have incurred, or to incur, any penalty or forfeiture whatsoever, for demanding and taking for any such letter, so delivered, or to be delivered, as aforesaid, one penny, over and above the penny paid upon putting such letter into the penny post office, or for detaining or delaying any such letter, until such one penny for any such letter so delivered, or to be delivered, as aforesaid, was or shall be paid; any thing in the said act, or in any other law or statute to the contrary in any wise notwithstanding."

Penny post-men carrying letters out of *London*, *Westminster*, or *Southwark*, may demand id. at delivery.

STAT. 22 Geo. 2, c. 25, [A. D. 1749, intituled] "An act to explain and amend so much of an act made in the ninth year of the reign of queen *Anne*, intituled, *An act for establishing a general post office for all her majesty's dominions; and for settling a weekly sum out of the revenues thereof for the service of the war, and other her majesty's occasions*; as relates to horses or furniture to be let to persons riding post."

"Whereas by an act made in the ninth year of the reign of her late majesty queen *Anne*, intituled, *An act for establishing a general post office for all her majesty's dominions; and for settling a weekly sum out of the revenues thereof for the service of the war, and other her majesty's occasions*; it is (amongst other things) enacted, That no person or persons shall presume to keep, provide, and maintain horses or furniture for the horsing of any person or persons riding post (that is to say) riding several stages upon a post road, and changing horses, or shall let to hire, or furnish any person or persons whatsoever with horses or furniture for riding post as aforesaid, on any of the roads or stages now or hereafter to be appointed, with or without a guide or horn, for hire or reward, or any agreement or promise of reward, whereby he or they may have any profit or advantage, on pain of forfeiting the sum of five pounds for every several offence against the tenor of the said act: and whereas the said restriction hath been construed

9 Annæ, c. 10.

The act not to prohibit the furnishing chaises, &c. upon the road.

to extend to chaises and calashes lett out for hire, and which change horses at certain stages upon the post roads, in like manner as horses lett out by the post office are changed; be it therefore enacted and declared by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That nothing in the said act contained doth or shall extend, or be construed to extend, to restrain or prohibit the letting out for hire, chaises, or calashes, with horses to draw the same, or the furnishing horses for drawing chaises or calashes at any stage or stages upon any post road to any person whatsoever; and that it shall and may be lawful for all persons to lett out for hire, as well upon the post roads as elsewhere, chaises duly licensed, with horses to draw the same, and to furnish or exchange horses for drawing any such chaises or calashes; any thing in the said act to the contrary in any wise notwithstanding.

Persons letting chaises may furnish horses for persons attending.

Sec. 2. "Provided also, and be it further enacted by the authority aforesaid, That it shall be lawful for all persons who lett out chaises or calashes with horses for hire, to lett out horses and furniture for horsing any person or persons accompanying or attending any person or persons who shall travel in chaises or calashes, and to change such horses and furniture in manner as is before-mentioned.

This act not to defeat any judgment before 25 March, 1749.

Sec. 3. "Provided always, and it is hereby declared and enacted, That nothing herein contained shall be construed to extend to stay, annul, or defeat any judgment or verdict obtained by virtue of the said above-recited act of the ninth year of her late majesty queen *Anne*, on or before the twenty-fifth day of *March*, one thousand seven hundred and forty-nine, or the proceedings thereon; any thing herein contained to the contrary notwithstanding."

STAT. 26 Geo. 2, c. 13, [A. D. 1753, intituled] made, among other purposes, "for ascertaining the rates payable for the postage of certain letters."

9 Ann. c. 10.

Sec. 7. "And whereas by an act made in the ninth year of the reign of her late majesty queen *Anne*, intituled, *An act for establishing a general post office for all her majesty's dominions, and for settling a weekly sum out of the revenues thereof for the service of the war, and other her majesty's occasions*; the post master general and his deputy and deputies is and are authorized to demand, have, receive and take for the portage and conveyance of every single letter or piece of paper sent to and from the general post office in *London*, to and from any parts or places in *Great Britain*, or the kingdom of *Ireland*, certain rates in the said act mentioned: and whereas one or more writ or writs or other proceedings at law are frequently sent inclosed in a letter, or wrote upon one and the same piece of paper with a letter; be it declared and enacted by the authority aforesaid, That every such writ and every such proceeding at law shall be rated, taxed and paid for as a several and distinct letter, according to the rates mentioned in the said act.

Every writ, &c. to pay as a distinct letter.

Sec. 7.

SECT. 8. " And whereas patterns of cloth, silk, stuff, and small samples of other sorts of goods and other things, not being paper, are frequently sent inclosed in a single letter or piece of paper; be it declared and enacted by the authority aforesaid, That for every single letter or cover containing one or more paper or papers with patterns, or containing one or more pattern or patterns of cloth, silk or stuff, or one or more sample or samples of any other sort of goods, or one or more piece or pieces of any other sort of thing inclosed therein or affixed thereto, though not paper, if the same together do not weigh an ounce weight, the rates payable by the said act for a double letter shall be paid, and no more."

Letters inclosing several patterns not exceeding 1 ounce weight, to pay only as a double letter.

STAT. 4 Geo. 3, c. 24, [A. D. 1764, intituled] " An act for preventing frauds and abuses in relation to the sending and receiving of letters and packets free from the duty of postage."

" Whereas, under colour of the privilege of sending and receiving post Preamble.

letters by members of parliament, free from the duty of postage, many great and notorious frauds have been and still are frequently practised, as well in derogation of the honour of parliament, as to the detriment of the public revenue; divers persons having presumed to counterfeit the hand, and otherwise fraudulently to make use of the names, of members of parliament, upon letters and packets to be sent by the post, in order to avoid the payment of the duty of postage: and whereas the allowance of sending and receiving letters and packets free from the duty of postage, heretofore granted to, or customarily exercised by, certain persons not being members of parliament, in respect of their offices, has not been sufficiently confined to such letters and packets only as relate to the business of their respective offices, and may therefore, if continued without further restrictions and limitations, be liable to great abuse: in order, therefore, to put the more effectual stop to these and the like frauds and abuses, and at the same time to ascertain, for the better guidance and direction of his majesty's postmaster general, and the officers to be employed under him, in the performance of their duty, by what persons only, and under what regulations or restrictions, the privilege or allowance of sending and receiving letters and packets free from the duty of postage shall thenceforth be enjoyed and exercised, may it please your majesty that it may be enacted; and be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That from and after the first day of May, one thousand seven hundred and sixty-four, so long as the revenue arising in the general letter office and post office, or office of postmaster general, shall continue to be carried to, and made part of the aggregate fund, no letters or packets sent by the post, to or from any place whatsoever, shall be exempted from paying the duty of postage, according to the rates established by the several acts of parliament now in force; other than and except such letters and packets as are herein after excepted, and in such manner, and under such restrictions,

From and after the 1 May, 1764, while the revenue of the post office shall continue to be carried to the aggregate fund; no letters or packets shall be exempted from postage, but such as shall

be sent from or to the king, and such, not exceeding two ounces in weight, as shall be sent during the session of parliament, or within 40 days before or after summons or prorogation, and be signed on the outside by a member of either house, and the whole of the superscription to be of such member's writing; or, directed to a member, at his usual residence, or place where he shall then be, or at the house, &c. of parliament: and in like manner, letters and packets sent from and to places in Ireland, during the session there, or within 40 days before or after summons or prorogation, signed and directed as aforesaid: also all letters and packets to the lord high treasurer, or commissioners and secretaries to the treasury; lord high admiral, commissioners and

tions, as are herein after declared and enacted concerning the same; that is to say, except all such letters and packets as shall be sent from or to the king's most excellent majesty; all letters and packets, not exceeding the weight of two ounces, sent from and to any places (within the kingdoms of *Great Britain* or *Ireland*) during the sitting of any session of parliament, or within forty days before or forty days after any summons or prorogation of the same, which shall be signed, on the outside thereof, by any member of either of the two houses of parliament of *Great Britain*, and whereof the whole superscription shall be of the hand writing of such member, or which shall be directed to any member of either house of the parliament of *Great Britain*, at any of the places of his usual residence, or at the place where he shall actually be at the time of the delivery thereof, or at the house of parliament, or the lobby of the house of parliament of which he is a member; all letters and packets, not exceeding the weight of two ounces, sent from and to any places within the kingdom of *Ireland*, during the sitting of any session of parliament of *Ireland*, or within forty days before or forty days after any summons or prorogation thereof, which shall be signed, on the outside thereof, by any member of either of the two houses of the parliament of *Ireland*, and whereof the whole superscription shall be of the hand writing of such member, or which being sent, during such time as aforesaid, from any part of *Great Britain* or *Ireland* to any part of *Ireland*, shall be directed to any member of either house of the parliament of *Ireland*, at any of the places of his usual residence, or at the place where he shall actually be at the time of the delivery thereof, or at the house of parliament, or the lobby of the house of parliament of which he is a member; all letters and packets directed to the lord high treasurer, or commissioners of the treasury, or the secretaries to the treasury; to the lord high admiral, or commissioners of the admiralty, or the secretaries of the admiralty; to his majesty's principal secretaries of state, or their under secretaries; to the commissioners for trade and plantations, or their secretary; to his majesty's secretary at war or the deputy secretary at war; or to his majesty's lieutenant general, or other chief governor or governors of *Ireland*, and his or their chief secretary, his or their secretary for the provinces of *Ulster* and *Munster* in that kingdom, his or their secretary residing always in *Great Britain*, the under secretary and first clerk in the office in *Ireland* of the said chief secretary, the first clerk in the office in *Ireland* of the said secretary for the provinces of *Ulster* and *Munster*; or to his majesty's postmaster general, or to the deputy of the postmaster general, for that part of *Great Britain* called *Scotland*, for the kingdom of *Ireland*, or for his majesty's dominions in *America* respectively; or to the secretary of such postmaster general, or deputy of the postmaster general, or to the farmer of the bye and cross road letters, or to any of the surveyors of the post office, all for the time being; and all letters and packets sent from any of the said officers for the time being, which shall be signed, on the outside thereof, by such officer, and whereof the whole superscription shall likewise be of the hand writing of such officer; and also except all letters and packets sent from the treasury, the admiralty office,

office, the office of his majesty's principal secretaries of state, the plantation office, the war office, or from the general post office at *London*, or from any of the chief offices at *Edinburgh*, at *Dublin*, or in *America*, and which shall appear, by an indorsement made thereupon by some person properly authorized as herein after mentioned to make the same, to be upon his majesty's service, and shall be sealed with the seal of the office, or with the seal of the principal officer in the office or department from which they are sent.

or their secretary; secretary at war, or his deputy; lieutenant general, or other chief governor or governors of Ireland; or their chief secretary, or secretary for the provinces of Ulster and Munster; their secretary residing in Great Britain; the under secretary, and first clerk, in the office in Ireland of the chief secretary, and the first clerk in the office of the secretary for Ulster and Munster, the postmaster general, or deputy for Scotland, Ireland, and America; the secretary, or deputy of the postmaster general; farmer of the bye and cross road letters; surveyors of the post office; and letters and packets sent from any of the said offices, signed by them on the outside, and the whole superscription of their writing: and letters and packets from the treasury, admiralty office, office of the secretaries of state, plantation office, war office, general post office at London, chief offices at Edinburgh, Dublin, and America, indorsed for the king's service, and sealed with the seal of office, or the principal officer in the department.

Sec. 2. " And, for more effectually preventing all such frauds and abuses as might otherwise be practised under colour of the allowance hereby granted and continued, of sending letters and packets from the several offices and officers herein before mentioned free from the duty of postage; be it further enacted by the authority aforesaid, That it shall and may be lawful for the lord high treasurer, or commissioners of the treasury, the lord high admiral, or commissioners of the admiralty, his majesty's principal secretaries of state, the commissioners for trade and plantations, his majesty's secretary at war, his majesty's postmaster general, and the deputies of the postmaster general herein before mentioned, all for the time being, to authorize and direct certain persons in each of their offices or departments respectively, a list of whose names shall be from time to time transmitted, by the principal officer or officers authorizing the same, to the general post-office in *London*, to make and subscribe an indorsement upon each letter or packet which shall concern the publick business of their respective offices, signifying that such letter or packet is upon his majesty's service, and to seal the same with the seal of such office or officer respectively; all which persons are hereby strictly forbid so to indorse and seal any letter or packet whatsoever, unless such only concerning which they shall receive the special direction of their superior officer, or which they shall themselves know to concern the business of their respective offices; and if any person employed in any of the said offices, shall knowingly make and subscribe such indorsement, or procure the same to be made upon any letter or packet which does not really concern the business of the office in respect of which he is authorized to make the same, he shall, for the first offence, forfeit and pay the sum of five pounds, to be recovered and applied in such manner as, by the act of the ninth year of the reign of queen *Anne* for establishing a general post office, is directed, with respect to the penalties inflicted by the said act; and, for the second offence, shall be dismissed from his office.

officer, or which concerns the business of the office, on forfeiture of 5 l. for the first offence, to be recovered and applied as by act 9 *Anne* is directed, and for the second offence, the offender to be dismissed.

Persons appointed to make such indorsements, not to exceed two in any office, admiralty and war offices excepted; and in the admiralty not to exceed eight in time of peace, and twelve in time of war; and in the war office, not to exceed six in time of peace, and ten in time of war.

Sec. 3. " Provided always, That the number of persons so to be appointed, in each of the offices above mentioned, to make and subscribe such indorsement as aforesaid, shall not exceed two in any one office or department, except only in the admiralty office and the war office; and that the number so to be appointed in the admiralty office shall not exceed eight in time of peace, or twelve in time of war; and that the number so to be appointed in the war office shall not exceed six in time of peace, or ten in time of war.

Where any privileged person, disabled from writing the whole superscription, shall authorize some person to sign his name upon, and write the superscription, and give notice thereof under his hand and seal to the postmaster general, letters and packets so signed and superscribed shall go free.

Sec. 4. " Provided also, and be it further enacted by the authority aforesaid, That in case any person intitled to send letters or packets free of the duty of postage, being, by bodily infirmity, disabled from writing the whole superscription of such letters or packets, shall chuse to authorize and appoint some one person, on his behalf, and in his stead, to sign his name upon, and write the superscription of such letters and packets, and shall cause notice thereof in writing, under his hand and seal, to be transmitted to his majesty's postmaster general, all letters and packets, so signed and superscribed by the person so authorized and appointed, shall be allowed to pass free of the duty of postage, and shall in all respects be proceeded with, as if the whole superscription had been of the hand writing of the person by whom such authority was given as aforesaid.

Printed votes and proceedings in parliament, and news papers, sent without covers, or in covers open at the sides, and signed on the outside by a member, or directed to a member, according to notice given by him to the postmaster general, or his deputy at Edinburgh or Dublin, are to go free.

Sec. 5. " Provided always, and it is hereby further enacted, That nothing herein contained shall extend to charge with the duty of postage, any printed votes, or proceedings in parliament, or printed news papers, being sent without covers, or in covers open at the sides, which shall be signed, on the outside thereof, by the hand of any member of parliament, in such manner as hath been heretofore practised, or which shall be directed to any member of parliament, at any place whereof he shall have given notice in writing to the postmaster general, or to his deputy at *Edinburgh* or *Dublin* respectively, but that all such votes, proceedings, and news papers, so sent and signed or directed as aforesaid, shall be received free of the duty of postage; any thing in this or any former act to the contrary notwithstanding.

Clerks in the offices of the secretaries of state and post office, being duly licensed, may continue to frank the votes, and proceedings in parliament.

Sec. 6. " And forasmuch as it hath been usual for the clerks in the offices of his majesty's principal secretaries of state, and also for certain officers in the office of his majesty's postmaster general, to frank printed votes, and proceedings in parliament, and printed news papers, to be sent by the post; be it therefore enacted by the authority aforesaid, That it shall and may be lawful for such clerks and officers as aforesaid, being thereunto licensed by his majesty's principal secretaries of state, or his majesty's postmaster general respectively, to continue to frank such printed votes,

votes, and proceedings in parliament, and printed news papers, in such manner as they have heretofore been accustomed to frank the same ; provided that such printed votes, proceedings, and news papers, shall be sent without covers, or in covers open at the sides.

ment, and news papers, as heretofore ; sending the same without covers, or in covers open at the sides.

Sett. 7. And be it further enacted by the authority aforesaid, That it shall and may be lawful for his majesty's postmaster general, or any of the officers employed under him, to examine and search any packet sent without a cover, or in a cover open at the sides, in order to discover whether any other paper or thing whatsoever be inclosed or concealed in or with such printed paper, as is hereby permitted to be sent free of postage without a cover, or in a cover open at the sides ; and in case any such other paper or thing whatsoever shall be found to be inclosed or concealed in or with such printed paper as aforesaid, or in case there shall be any writing, other than the superscription upon such printed paper, or upon the cover thereof, the whole of such packet shall be charged with the duty of postage, according to the rates established by the several acts of parliament now in force for that purpose.

other than the superscription upon the printed paper, or cover, the whole of such packet is to be charged with the postage.

Sett. 8. " And be it further enacted by the authority aforesaid, That if any person shall, after the first day of *June*, one thousand seven hundred and sixty-four, counterfeit the hand writing of any person whatsoever, in the superscription of any letter or packet to be sent by the post, in order to avoid the payment of the duty of postage, every person, so offending, shall be deemed guilty of felony, and shall be transported for seven years." If any person shall, after 1 June, 1764, counterfeit the writing of any person in the superscription of any letter or packet, to avoid the postage, he shall be adjudged guilty of felony, and be transported for seven years.

STAT. 5 *Geo.* 3; *c.* 25, [*A. D.* 1765, intituled] " An act to alter certain rates of postage, and to amend, explain, and enlarge several provisions in an act made in the ninth year of the reign of queen *Anne*, and in other acts relating to the revenue of the post-office."

" Most gracious Sovereign,

" Whereas the security and improvement of correspondence, through-
out your majesty's dominions, is a matter of great concernment, and highly necessary for the preservation and extension of trade and commerce : and whereas by an act made in the ninth year of the reign of her late majesty queen *Anne*, several rates are settled for the port and conveyance of letters and packets passing to and from the several parts of the *British* dominions in *Europe* and *America* : and whereas by the increase of trade and commerce since the passing of the said act, and by the vast accession of territory gained by the late treaty of peace, several communications are opened, and new posts have been or may be established to and from the several

Preamble,

Repeal of so much of the act 9 Anne, as establishes the rates of postage of letters between London and the British dominions in America, and places within the said dominions:

and from and after 10 Oct. 1765, instead of the rates thereby established, those following are to take place.

several parts of your majesty's dominions in *America*, for which the rates of postage cannot, under the present law, be properly ascertained: and whereas the present rates of postage may in some parts be reduced, and the revenue nevertheless may hereafter be improved, by means of a more extensive circulation: we your majesty's most dutiful and loyal subjects, the commons of *Great Britain* in parliament assembled, do most humbly beseech your majesty that it may be enacted; and be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That so much of the said act made in the ninth year of the reign of her said late majesty queen *Anne*, intituled, *An act for establishing a general post office for all her majesty's dominions, and for settling a weekly sum out of the revenues thereof for the service of the war, and other her majesty's occasions*, as establishes certain rates or sums for the port or conveyance of letters and packets passing between *London* and the *British* dominions in *America*, and between any places within the said dominions, shall from and after the tenth day of *October*, one thousand seven hundred and sixty-five, be, and is hereby repealed.

Sect. 2. " And to the end that more easy and equal rates of postage may be settled and established, and the benefit of posts be in time extended to every part of the *British* dominions in *America*, be it enacted by the authority aforesaid, That from and after the said tenth day of *October*, one thousand seven hundred and sixty-five, it shall and may be lawful to and for his majesty's postmaster general for the time being, and his deputy and deputies by him thereunto sufficiently authorized, to and for the use of his majesty, his heirs, and successors, to demand, have, receive and take, for the port and conveyance of all and every the letters, packets, and other things, that shall be carried or conveyed to or from *London*, from or to any of the *British* dominions in *America*, and to or from any part of the said dominions, from or to any other part thereof, according to the several and respective rates and sums hereafter mentioned; the same being rated either by the letter, or by the ounce; that is to say,

Rates of postage from London to any port within the British dominions in America, and from any such port to London;

" For all letters and packets passing from *London* to any part within the *British* dominions in *America*, and from any such port unto *London*, for every single letter one shilling; for every double letter two shillings; for every treble letter three shillings; and for every ounce four shillings; and so in proportion for every packet of deeds, writs, or other things.

and from any port in the said dominions to any other port therein, by sea.

" For all letters and packets conveyed by sea from any port in the *British* dominions in *America* to any other port within the said dominions, for every single letter four pence; for every double letter eight pence; for every treble letter one shilling; and for every ounce one shilling and four pence; and so in proportion for every packet of deeds, writs, or other things.

“ For the inland conveyance of all letters and packets to or from any chief post office established, or to be established, within the *British* dominions in *America*, from or to any other part of the said dominions, not exceeding sixty *British* miles distant from such chief offices respectively; or from the office where such letters or packets, not passing through any such chief office, may be put in, for every single letter four pence; for every double letter eight pence; for every treble letter one shilling; and for every ounce one shilling and four pence; and, being upwards of sixty such miles, and not exceeding one hundred such miles, for every single letter six pence; for every double letter one shilling; for every treble letter one shilling and six pence; and for every ounce two shillings; and, being upwards of one hundred such miles, and not exceeding two hundred such miles, for every single letter eight pence; for every double letter one shilling and four pence; for every treble letter two shillings; and for every ounce two shillings and eight pence; and for every distance not exceeding one hundred such miles beyond such two hundred miles, and for every such further distance, for every single letter two pence; for every double letter four pence; for every treble letter six pence; and for every ounce eight pence; and so in proportion, according to the said several and respective rates and distances, for every packet of deeds, writs, or other things.

Rates of inland postage in *America* for any distance not exceeding 60 miles;
for upwards of 60 and not exceeding 100 miles;
for upwards of 100 and not exceeding 200 miles;
and for upwards of 200 and not exceeding 100 miles further, &c.

SECT. 3. “ And whereas by certain clauses in the said act, made in the ninth year of the reign of her said late majesty queen *Anne*, it is enacted, That all letters and packets that, by any master of any ship or vessel, or any of his company, or any passengers therein, should or might be brought to any port town, or which should arrive or touch at any port belonging to any port town within any her majesty's dominions, or any the members thereof, or which should be on board any ship or vessel which should or did touch or stay at any such port town (other than such letters as in the said act are excepted) should, by such master, passenger, or other person or persons, be forthwith delivered unto the deputy or deputies of such postmaster general for the time being by him appointed for such place or port town, and to be, by such deputy or deputies, sent post unto the said general post office, to be delivered according to the several and respective directions of the same; upon pain of forfeiting the sum of five pounds of *British* money for every several offence against the tenor of the said act: and whereas, the said provision, in the said above recited clause, hath been found ineffectual for the purposes intended; be it therefore further enacted by the authority aforesaid, That from and after the tenth day of October, one thousand seven hundred and sixty-five, no ship or vessel shall be permitted to break bulk, or to make any entry in any port of the *British* dominions, until all letters and packets brought by any master of any such ship or vessel, or by any of his company, or any passenger on board the same, to any port in the said dominions where posts are or hereafter may be established, and from whence such letters and packets can or may be dispatched by post, shall be delivered to the deputy or deputies,

Recital of clauses in act 9 Annæ.

From and after 10 Oct. 1765, no vessel to be admitted to make entry, or break bulk, till the letters on board are delivered to the post office;

except in such cases where they are to be delivered to the superintendent of the quarantine;

to be dispatched by him to the post office. Persons refusing to deliver up such letters, forfeit 20l.

One moiety to the king, the other to the prosecutor; with full costs.

1 d. extra charged on all ship letters not brought by the packet boats.

From and after 10 Oct. 1765, the present rates of postage by the general post, not exceeding 1 post stage in Great Britain and Ireland, and not exceeding 2 post stages in Eng-

or agents, of the said postmaster general for the time being, to be by him or them forwarded, according to their respective directions, in the same course that other letters are sent from such respective ports; except such letters, commissions, and other matters and things, as are excepted in the said act made in the ninth year of the reign of her late majesty queen *Anne*; and also, except all such letters and packets as shall or may be brought in any ship or vessel liable to the performance of quarantine; all which letters or packets last-mentioned shall be delivered, by the person or persons having possession thereof, to the person or persons appointed to superintend the quarantine, that all proper precautions may be by him or them taken before the delivery thereof; and when due care has been had therein, the said letters or packets shall be by him or them dispatched, in the usual and accustomed manner, by the post; and all masters, mariners, passengers, and other person or persons, neglecting or refusing to deliver the letters or packets brought by them as aforesaid, shall, for every such neglect or refusal respectively, forfeit the sum of twenty pounds; to be sued for and recovered by action of debt, bill, plaint, or information, in any court of record within the kingdom, colony, plantation, or place, where the offence shall be committed; and no essoin, privilege, protection, or wager of law, shall be admitted; one moiety of the said penalty to his majesty, his heirs, and successors, and the other moiety thereof to such person or persons who shall or will inform against such offender or offenders, and sue for the said penalties and forfeitures; and for every recovery such person or persons, so informing and prosecuting for the said penalties and forfeitures, shall recover and have also taxed and paid their full costs of suit; any thing in the said act, made in the ninth year of the reign of her majesty queen *Anne*, to the contrary thereof notwithstanding.

Sec. 4. " And be it further enacted by the authority aforesaid, That it shall and may be lawful to and for the said deputy or deputies to demand, have, receive, and take, for every such letter and packet so delivered from any ship or vessel, other than packet-boats, to such deputy or deputies at the ports in his majesty's dominions, as shall be directed to any place within the town belonging to such port, or within the limits of the delivery of letters and packets by such deputy and deputies, the rate or sum of one penny, over and above what may now be received for the same.

Sec. 5. " And be it further enacted by the authority aforesaid, That from and after the tenth day of *October*, one thousand seven hundred and sixty-five, the rates now payable for the postage of letters and packets, sent or conveyed by the general post, not exceeding one post stage in *Great Britain* and *Ireland*, and not exceeding two post stages in that part of *Great Britain* called *England*, do cease and determine; and that from and after the said tenth day of *October*, one thousand seven hundred and sixty-five, it shall and may be lawful to and for the said postmaster general, and his deputy and deputies by him thereunto sufficiently authorized, to and for the use of his majesty, his heirs and successors, to demand, have, receive, and take, for the port and conveyance of all such letters and packets

packets which he shall convey, carry, or send post, within the kingdom of *Great Britain* and *Ireland*, according to the several rates and sums hereafter-mentioned (the same being rated either by the letter or by the ounce) that is to say,

land, are to
cease,
and the fol-
lowing rates
are to take
place;

“ For the port or conveyance of every single letter, so conveyed or carried by the post as aforesaid, not exceeding one whole post stage from the office where such letter may be put in, within the kingdoms aforesaid, the sum of one penny; for every double letter two pence; for every treble letter three pence; and for every ounce four pence; and so in proportion for every packet of deeds, writs, or other things.

viz. Rates for
postage not
exceeding
one post stage;

“ And for the port and conveyance of every single letter, so conveyed or carried by the post as aforesaid; above one post stage, and not exceeding two post stages, from the office where such letter may be put in, within that part of *Great Britain* called *England*, the sum of two pence; for every double letter four pence; for every treble letter six pence; and for every ounce eight pence; and so in proportion for every packet of deeds, writs, or other things.

above one and
not exceeding
two post
stages.

Secl. 6. “ Provided always, and be it further enacted by the authority aforesaid, That nothing herein before contained shall extend, or be construed to extend, to alter, or in any wise to affect, the rates or sums to be paid for letters or packets passing or repassing by the carriage called *The Penny Post*.

But these re-
gulations are
not to extend
to the penny
post.

Secl. 7. “ And whereas, for the more ready and extensive conveyance of letters and packets between that part of *Great Britain* called *England*, and *Ireland*, and for the conveniency of trade and commerce between the said kingdoms, it may be convenient and expedient to improve the communication for the conveyance of such letters and packets by the post through *Carlisle*, *Dumfries*, and *Port Patrick*, or some other convenient port in *Scotland*; and through *Donaghadee*, or some other convenient port in *Ireland*; be it further declared and enacted by the authority aforesaid, That it shall and may be lawful to and for the said postmaster general, and his deputy or deputies by him thereunto sufficiently authorized, to demand, have, receive, and take, for the port and conveyance of all letters and packets, passing and repassing by the post between *England* and *Ireland*, through *Carlisle*, *Dumfries*, *Port Patrick*, and *Donaghadee*, or other convenient ports in *Scotland* and *Ireland*, the same rates or sums for *English* postage, according to the number of miles or stages such letters and packets are carried by the post in *England*, as also the same rates or sums for *Scotch* postage, according to the number of miles or stages such letters and packets are carried by the post in *Scotland*, and moreover the same rates or sums for packet postage between *Port Patrick* and *Donaghadee*, or other convenient ports in *Scotland* and *Ireland*, as likewise the same rates or sums for *Irish* postage, according to the number of miles or stages such letters are carried by the post in *Ireland*, as are respectively settled, established, and ascertained, by the said act made in the ninth year of the reign of her said late majesty queen *Anne*, or by this present act.

Rates of post-
age between
England and
Ireland, thro'
Carlisle,
Dumfries,
Port Patrick,
and *Donagh-*
adee, or other
convenient
ports.

Repeal of so much of the act 9 Annæ, as directs the postage between Port Patrick and Donaghadee to be paid where the letters are delivered.

To prevent disputes, post roads may be measured;

and a return to be made thereof upon oath; and entered in the three chief post offices in Great Britain and Ireland; and the chief offices in America.

Fair surveys to be made out, and deposited in the respective offices here mentioned,

signed by the persons making the same, and attested upon oath, and certified by the postmaster general or his deputies.

On suspicion of error, new surveys may be made out, according to which postage is to be charged.

Sec. 8. “ And be it further enacted by the authority aforesaid, That so much of the said act, made in the ninth year of the reign of her late majesty queen *Anne*, as directs, that the rates or sums to be paid for the conveyance of letters, to be sent by packet boats, between *Port Patrick* and *Donaghadee*, shall be paid at the place where such letter or letters are delivered, in order to be sent by such packet boats, shall, from and after the said tenth day of *October*, one thousand seven hundred and sixty-five, be, and is hereby, repealed.

Sec. 9. And, to the end that all letters or packets may be charged with postage, according to the rated distance they are respectively carried by the post, and for preventing all disputes touching the same, be it further enacted by the authority aforesaid, That it shall and may be lawful to and for such person and persons as the postmaster general for the time being shall appoint, to measure, or cause to be measured, by the wheel, all the post roads which are now settled and established, or which shall hereafter be settled and established, in any part of the kingdoms of *Great Britain* and *Ireland*, and other the *British* dominions.

Sec. 10. “ Provided always, That such person or persons, who shall be so appointed as aforesaid to measure the said distances, and every of them, shall be sworn to perform the same according to the best of their skill and judgment; which oath shall and may be administered by any justice of the peace, who is hereby authorized and required to administer the same, and to make certificates thereof in writing, to be entered, without fee or charge, in the three chief post offices in *Great Britain* and *Ireland*; and the chief post offices established, or to be established, in *America*; and moreover, that such person or persons so to be appointed by such postmaster as aforesaid, shall, and they are hereby required to cause fair surveys or books to be made out; one of each whereof shall be left with his majesty's postmaster general in *London*, another of each to be left at the chief post office in *Edinburgh* with the postmaster general's deputy there, another of each to be left at the chief post office at *Dublin* with the postmaster general's deputy there, and another of each of such surveys or books shall be left at each of the chief post offices established, or to be established, in *America*, with the respective deputies of the postmaster general there, to remain in the said post offices; each of which said surveys or books shall be signed by the person or persons making the same, who shall and are hereby respectively required to make oath of the truth of such surveys, which oath or oaths shall and may be administered by any justice of the peace, who is hereby authorized and required to administer the same; and a certificate of his or their having sworn to the truth thereof shall be signed by the postmaster general for the time being, or by his deputy or deputies, in such chief post offices in *Great Britain* and *Ireland*, and in the *British* dominions in *America*; which books and surveys shall determine the distances on all the said post roads: and in case of any suspicion of error or wrong admeasurement, it shall and may be lawful for the said postmaster general to cause new surveys to be made; and the last surveys which shall be made, and shall be verified and attested as above

directed, shall, in all courts of justice, be evidence of the distances on such post roads; and all rates granted by any former act or acts, or by this present act, for the port or conveyance of letters and packets, shall be paid and taken according to such surveys.

Sect. 11. " And be it further enacted by the authority aforesaid, That it shall and may be lawful to and for the postmaster general for the time being, and his deputy and deputies by him thereunto sufficiently authorized, to settle and establish an office, to be called the penny post office, in any city or town, and the suburbs thereof, and places adjacent, within the kingdoms of *Great Britain* and *Ireland*, and the *British* dominions in *America*, where such post shall, by the post master general, be adjudged necessary and convenient; and to demand, have, receive, and take, the same rates and sums for the postage and conveyance of all letters and packets, conveyed by such penny post, as are or may be taken for the carriage of letters and packets, sent or conveyed by the carriage called the penny post, established and settled within the cities of *London* and *Westminster*, and borough of *Southwark*, and parts adjacent, according to the extent and meaning of the said act made in the ninth year of her said late majesty queen *Anne*, and of an act made in the fourth year of his late majesty king *George* the Second, and of this present act.

Power given to settle Penny Post Offices where convenient.

Sect. 12. " And be it further enacted by the authority aforesaid, That when such penny post office or offices shall be settled and established in such cities, towns, suburbs, or places adjacent, within the kingdoms of *Great Britain* and *Ireland*, and the *British* dominions in *America*, as aforesaid, no person or persons whatsoever shall make any collection of letters or packets in or near such city, town, suburbs, or places, where such penny post office or offices shall be established, without licence or leave of the postmaster general for the time being; upon pain of incurring the forfeitures and penalties to be forfeited and paid by persons collecting, receiving, carrying, recarrying and delivering letters, contrary to the said act made in the ninth year of the reign of her said late majesty queen *Anne*, to be recovered in manner as by the said act is directed, and with full costs of suit.

Where such offices are established, no person may collect the letters without being duly licensed.

Sect. 13. " And be it further enacted and declared by the authority aforesaid, That all letters and packets whatsoever, which shall or may be brought, by the inland or foreign post, to the general post office in *London*, directed to any person or persons at any place or places beyond the delivery of the inland or foreign departments of the general post office respectively, and within the delivery of the said office called the penny post office, shall be conveyed and delivered by the said penny post office; and that it shall and may be lawful for any messenger or person, carrying or transmitting such letters or packets, to demand and take for the carriage and delivery of the same, one penny, and no more, over and above the rates of postage which shall have become due, for the port or conveyance of such letters or packets to the general post office.

Letters, &c. brought by the inland or foreign post to the London office, and directed beyond the department of the general post, but within the delivery of the penny post, may be sent by the

penny post, and charged accordingly.

From and after 5 July, 1765, no packet exceeding 4 oz. (except those sent by the general post, &c.) may be sent by the penny post.

Señ. 14. " And whereas the weight of letters and packets, sent or conveyed by the carriage called the penny post, hath not yet been ascertained by any law or statute: and whereas many heavy and bulky packets and parcels are now sent and conveyed by such carriage, which, by their bulk and weight, greatly retard the speedy delivery thereof; be it therefore enacted by the authority aforesaid, That from and after the fifth day of *July*, one thousand seven hundred and sixty-five, no letter, packet, or parcel whatsoever, shall be forwarded, sent, or conveyed, by any carriage called the penny post, already established, or hereafter to be established, if the weight of such letter, packet, or parcel, shall exceed the weight of four ounces, other than such letters or packets as have first come by the post to the general post office, or shall be passing by the said carriage called the penny post, into the said general post office.

From 5 July, 1765, the same rates of postage are to take place between London and *Hamburgh* as between London and *Germany*.

Señ. 15. " And whereas by the said act, made in the ninth year of the reign of her said late majesty queen *Anne*, certain rates are established for all letters passing from *London* through the *Spanish Netherlands*, or the *United Provinces*, to *Hamburgh* (post-paid to *Antwerp* or *Amsterdam*) and from *Hamburgh* through the *Spanish Netherlands*, or the *United Provinces*, unto *London*; be it enacted, That so much of the said act, made in the ninth year of the reign of her said late majesty queen *Anne*, as establishes the rates last above-mentioned, shall, from and after the fifth day of *July*, one thousand seven hundred and sixty-five, be, and the same is hereby repealed; and the said rates shall from thenceforth cease and determine: and from and after the said fifth day of *July*, it shall and may be lawful to and for the said post master general, and his deputy or deputies by him thereunto sufficiently authorized, to and for the use of his majesty, his heirs, and successors, to demand, have, receive, and take, for the port and conveyance of all letters and packets, sent or conveyed by the post from *London* to *Hamburgh*, or from *Hamburgh* to *London*, the same rates or sums of money which, by the said act made in the said ninth year of the reign of her said late majesty queen *Anne*, are settled, and appointed to be taken for all letters and packets passing by the post from *London* to all other parts of *Germany*.

The postage of letters to be sent out of Great Britain, may, if deemed necessary, be demanded upon their being put into the office.

Penalty of any officer of the post office secreting or embezzling any letter with any bank bill or note, &c. therein,

Señ. 16. " And be it further enacted by the authority aforesaid, That it shall and may be lawful to and for the said post master general, and his deputy and deputies, if such postmaster general shall deem it necessary and expedient, to cause the rates or sums for the postage of all letters and packets which are to be sent by the post out of the kingdom of *Great Britain*, to be paid upon their being put into any post office within the said kingdom.

Señ. 17. " And be it further enacted by the authority aforesaid, That if any deputy, clerk, agent, letter carrier, or other officer whatsoever, appointed, or to be hereafter appointed and employed in the business of the post office, shall, from and after the tenth day of *October*, one thousand seven hundred and sixty-five, secrete, embezzle, or destroy, any letter, packet, bag, or mail of letters, which he, she, or they, shall and may be respectively entrusted with, or which shall have come to his, her, or their

their hands or possession, by virtue of their respective employments in the said post office, containing any bank note, bank post bill, bill of exchange, exchequer bill, *South Sea* or *East India* bond, dividend warrant of the bank, *South Sea*, *East India*, or any other company, society, or corporation, navy or victualling bill, seaman's ticket, state lottery ticket, goldsmith's note for the payment of money, or other bond or warrant, bill, or promissory note for the payment of money, or *American* provincial bill of credit; or shall steal and take, out of any letter or packet that shall come to his, her, or their hands or possession, by virtue of their respective employments, any such bank note, bank post bill, bill of exchange, exchequer bill, *South Sea* or *East India* bond, dividend warrant of the bank, *South Sea*, *East India*, or any other company, society, or corporation, navy or victualling bill, seaman's ticket, state lottery ticket, goldsmith's note for the payment of money, or other bond or warrant, or promissory note for the payment of money, or *American* provincial bill of credit, with intent to secrete, embezzle, or destroy the same; every such offender or offenders, being thereof convicted in due form of law, shall be deemed guilty of felony, and shall suffer death as a felon.

Sect. 8. "And be it further enacted by the authority aforesaid, That from and after the said tenth day of *October*, one thousand seven hundred and sixty-five, if any person or persons whatsoever shall rob any of his majesty's mails of any letter or letters, packet or packets, bag or mail of letters, although such robbery shall not appear, or be proved, to be a taking from the person, or upon the king's highway, or to be a robbery committed in any dwelling-house, or any coach-house, stable, barn, or any outhouse belonging to a dwelling-house, and although it should not appear that any person or persons were put in fear by such robbery, yet such offender or offenders, being thereof convicted as aforesaid, shall nevertheless respectively be deemed guilty of felony, and shall suffer death as a felon.

Sect. 19. "And be it further enacted by the authority aforesaid, That if any deputy, clerk, agent, letter carrier, or other servant, appointed, authorized, and intrusted, to take in letters or packets, and receive the postage thereof, shall, after the said tenth day of *October*, imbezzle, or apply to his, her or their own use, any money or monies by him, her, or them, received with such letters or packets, for the postage thereof; or shall burn or otherwise destroy any letter or letters, packet or packets, him, her, or them, so taken in or received; or who, by virtue of their respective offices, shall advance the rates upon letters or packets sent by the post, and shall not duly account for the money by him, her, or them, received for such advanced postage; every such offender or offenders, being thereof convicted as aforesaid, shall be deemed guilty of felony.

Sect. 20. "And be it further enacted by the authority aforesaid, That if any post boy or rider, having taken any of his majesty's mails, or bags of letters or packets, under his care, in order to convey the same to the next post town or stage, shall, after the said tenth day of *October*, quit or desert the same before his arrival at such post town or stage, or shall suffer any person

(except the

guard) to ride any other person or persons (the person or persons employed to guard such mail or bags of letters and packets only excepted) to ride on the horse or carriage, along with the said mails or bags of letters and packets; or shall loiter or loitering on the road, and wilfully mispend his time, so as to retard the arrival of the said mails or bags of letters at the next post town or stage; or shall not, in all possible cases, convey such mails or bags of letters after the rate of six *English* miles an hour at the least; every such offender, for every such offence, being thereof convicted, either by voluntary confession of the party, or by the oath or oaths of one or more credible witness or witnesses, before any one or more justice or justices of the peace (which oath and oaths the said justice or justices is and are hereby respectively impowered and required to administer) shall be sent to the house of correction, and confined to hard labour for any time not exceeding one month, nor less than fourteen days.

and unlawful-
ly collecting,
conveying, or
delivering,
letters or
packets,

he forfeits 10s.
for every let-
ter, &c.

and if not
paid forth-
with, he is to
be committed
to hard la-
bour.

Clauses, &c.
in the act of
9 Annæ, or in
any other act
touching the
general or
penny post
office, not
hereby al-
tered, or re-
pealed, ex-
tended to this
act.

Rates, and
pecuniary pe-
nalties, to be
deemed ster-
ling money.

Señ. 21. And be it further enacted by the authority aforesaid, That from and after the said tenth day of *October*, if any post boy or post-boys, rider or riders, shall, by himself or themselves, or in combination with others, unlawfully collect or receive letters or packets, or convey, or cause letters and packets to be unlawfully conveyed, and shall thereof be convicted, either by the voluntary confession of the party, or by the oath of one or more credible witness or witnesses, before any one or more justice or justices of the peace (which oath and oaths the said justice and justices is and are hereby respectively impowered and required to administer) every such offender or offenders shall, for every letter or packet so by him or them unlawfully collected, conveyed, or delivered, forfeit the sum of ten shillings, to be paid to the informer; and if the same shall not be forthwith paid upon conviction, it shall and may be lawful for such justice and justices to commit such offender or offenders to the house of correction, there to remain at hard labour for any space not exceeding two months, nor less than one month.

Señ. 22. " And be it further enacted by the authority aforesaid, That all and every the clauses, provisos, powers, privileges, advantages, disabilities, penalties, forfeitures, and methods for the recovery of the same matters and things, contained in the said act made in the ninth year of the reign of her said late majesty queen *Anne*, or in any other act or acts whatsoever, touching the general post office, or the carriage called *The Penny Post Office*, and not herein and hereby expressly altered or repealed, shall be applied and extended, and shall be construed to apply and extend, to this present act, as fully and effectually, to all intents and purposes, as if the same had been particularly repeated and re-enacted in the body of this present act.

Señ. 23. " And be it further enacted and declared, That all rates or sums of money established or appointed by this act, and also all sums of money imposed as forfeitures or penalties, and all sums of money required to be paid, and all other monies herein mentioned, shall be deemed and taken to be sterling money of *Great Britain*, and shall be collected, taken,

taken, recovered, and paid, to the amount of the value which such nominal sums bear in *Great Britain*.

Secl. 24. “ And be it further enacted by the authority aforesaid, That all the monies arising by the rates aforesaid, except the monies which shall be necessary to defray such expences as shall be incurred in the collection and management of the same, and all other expences attending the said office, and the due execution of the acts relating thereto, shall be appropriated and applied to such and the same uses, to which the present rates of postage are respectively now by law appropriated and made applicable. Monies arising by this act, to be applied as the present rates of postage.

Secl. 25. “ Provided always, and be it further enacted by the authority aforesaid, That all charges, out-goings, and disbursements, necessary for the receipt and management of the said rates, and the rates granted by former acts, and all other expences attending the said office, and the due execution of the several acts relating thereto, be allowed and paid, in like manner as the same have heretofore been allowed, authorized, and paid, at any time since the commencement of the rates granted by the said act made in the ninth year of the reign of queen *Anne*; any thing in this act, or in an act passed in the first year of his majesty's reign, intituled, *An act for the support of his majesty's household, and of the honour and dignity of the crown of Great Britain, to the contrary notwithstanding.* All necessary charges, &c. in the receipt and management of rates, to be allowed as usual.

Secl. 26. “ And whereas by an act made in the fourth year of the reign of his present majesty, intituled, *An act for preventing frauds and abuses, in relation to the sending and receiving of letters and packets free from the duty of postage,* it is enacted, That from and after the first day of *May*, one thousand seven hundred and sixty-four, so long as the revenue arising in the general letter office or post office, or office of postmaster general, shall continue to be made part of the aggregate fund, no letters or packets sent by the post, to or from any place whatsoever, shall be exempted from paying the duty of postage, except such letters and packets as are therein particularly excepted: and whereas the privilege of sending and receiving letters and packets, free from the duty of postage, is not by the said act extended to the paymaster general of his majesty's forces for the time being, or to the clerk of the parliaments, or to the clerk of the house of commons of *Great Britain*, for the time being, who, by virtue of their respective offices and employments, necessarily send and receive many letters relating to the publick concerns of these kingdoms; be it therefore enacted by the authority aforesaid, That from and after the passing of this act, the said paymaster general of his majesty's forces for the time being, shall and may send and receive letters, free from the duty of postage, in the same manner, and under such restrictions, as other officers mentioned in the said act are thereby permitted, in respect of their offices, to send and receive; and that the said clerk of the parliaments, and clerk of the house of commons of *Great Britain*, for the time being, shall and may respectively, from and after the passing of this act, send and receive letters, free from the duty of postage, in the same manner, and under such restrictions, as any member of either of the two houses of parliament of *Great Britain* now send and receive the same, in pursuance of the said act. Clause in act 4 Geo. 3.

Paymaster general.

Clerk of the parliaments, and clerk of the house of commons, empowered to send and receive letters free of postage.

Limitation of actions. *Stat. 27.* " And be it further enacted by the authority aforesaid, That if any action or suit shall be commenced against any person or persons for any thing done in pursuance of this act, the same shall be commenced within six months after the fact committed, and not afterwards; and the defendant or defendants in such action or suit shall and may plead the general issue, and give this act, and the special matter, in evidence; and that the same was done in pursuance, and by the authority of this act: and if it shall appear so to be done, or that such action or suit shall be commenced after the time before limited for bringing the same, that then the jury shall find for the defendant or defendants; and upon a verdict for the defendant, or if the plaintiff or plaintiffs shall be nonsuited, or discontinue his, her, or their action or suit, after the defendant or defendants shall have appeared; or if, upon demurrer, judgment shall be given against the plaintiff or plaintiffs, the defendant or defendants shall and may recover treble costs, and have the like remedy for the same, as any defendant or defendants hath or have in any other cases by law."

Treble costs.

Præmunire.

PRÆMUNIRE, is taken either for a writ so called, or for the offence whereupon the writ is granted: and the word is applied most commonly to the punishment first ordained by certain statutes, for such as transgressed them; for where it is said, that any man for an offence committed, shall incur a *præmunire*, it is meant that he shall incur the same punishment as is inflicted on those that transgress the stat. 16 Ric. 2, c. 5, commonly called "the Statute of *præmunire*." The word is derived from the verb *præmonere*, (being barbarously changed into *præmunire*) to forewarn or bid the offender take heed. *Cowell, edit. 1727.*

Notwithstanding that the offence of *præmunire* is not within the letter of the commission of the peace, yet, inasmuch as it is against the peace of the king and of the realm, any justice of the peace may, either on his own knowledge, or the complaint of others, cause any person to be apprehended for such offence; and he may take the examination of the person so apprehended, and the information of all who can give material evidence against him, and put the same in writing, and bind over the witnesses to the king's bench or gaol delivery; and certify his proceedings to the same court to which he shall bind over such informers. 2 Hawk. 39. *Hale's Pl.* 168.

By the stat. 27 Ed. 3, c. 1, impeaching judgments in the king's courts incurs a *præmunire*.

See this act at large under title *Popery*, page 665.

By

By stat. 16 *Ric. 2, c. 5*, commonly called the statute of *præmunire*, suing out foreign process incurs a *præmunire*.

See this act at large under title **Popery**, page 670.

By stat. 25 *Hen. 8, c. 20*, refusing to elect, or consecrate the person nominated by the king to a bishoprick, is made a *præmunire*.

By stat. 26 *Hen. 8, c. 14*, no suffragan shall exercise any jurisdiction, otherwise than by the bishop's commission, on pain of *præmunire*.

By stat. 1 *El. c. 1, sect. 29*, maintaining the authority of the see of *Rome*, is a *præmunire* in the second offence.

By stat. 5 *El. c. 1, sect. 21*, it is not lawful to kill a person attainted in *præmunire*.

By stat. 13 *Eliz. c. 2, sect. 7*, importing *agnus Dei*, &c. prohibited under penalty of a *præmunire*. See title **Popery**, page 684.

By stat. 27 *Eliz. c. 2, sect. 6*, sending money, &c. to priests of seminaries abroad, incur a *præmunire*. See title **Popery**, page 691.

By stat. 13 *Car. 2, c. 1*, to affirm maliciously or advisedly, by speaking or writing, that both, or either houses of parliament have a legislative power without the king, is a *præmunire*.

By stat. 31 *Car. 2, c. 2*, no subject shall be sent a prisoner out of the realm, on pain of a *præmunire*. See title **Bail**, page 218.

By stat. 6 *Ann. c. 7*, if any person shall maliciously and directly, by preaching, teaching, or advised speaking, affirm, that the pretender hath any right to the crown, or any other person, otherwise than as by the acts of parliament, he shall incur a *præmunire*.

The judgment in *præmunire* is, that the defendant shall be from thenceforth out of the king's protection, and his lands and tenements, goods and chattels, forfeited to the king, and that his body shall remain in prison at the king's pleasure. 1 *Inst.* 129.

Presentment.

A Presentment is that which the grand jury find, and present to the court, without any indictment delivered to them; which is afterwards reduced into the form of an indictment, and in nothing else differs from an indictment. There are other presentments of churchwardens, constables, justices of the peace, &c. which may be seen under their proper titles. 3 *Burn's Just.* 479.

Principal and Accessary.

THE principal is the person who actually commits any crime ; and the accessary is he who is assisting to him in the doing thereof. *2 Lil. Abr. 355.*

It seems to have been always an uncontroverted maxim, that there can be no accessaries in high treason, or trespass ; also it seems to have been always agreed, that whatsoever will make a man an accessary before in felony, will make him a principal in high treason, and trespass ; as battery, riot, forcible entry, and even in forgery and petit larceny. And, therefore, wherever a man commands another to commit a trespass, who afterwards commits it in pursuance of such command, he seems by necessary consequence to be as guilty of it, as if he had done it himself ; from whence it follows, that being in judgment of law a principal offender, he may be tried and found guilty, before any trial of the person who actually did the fact. *2 Hawk. P. C. 310.*

It seems agreed, that whosoever agrees to a trespass on lands or goods done to his use, thereby becomes a principal in it ; but that no one can become a principal in trespass on the person of a man by any such agreement. Also, it seems agreed, that no one shall be adjudged a principal in any common trespass, or inferior crime of the like nature, for barely receiving, comforting and concealing the offender, though he knows him to have been guilty, and that there is a warrant out against him, which by reason of such concealment cannot be executed ; and, if he cannot be punished as a principal, it is certain that he cannot be punished as an accessary, because in such offences, all who are punished as partakers of the guilt of him who did the fact, must be punished as principals in it, or not at all : yet, if a man knowing that there is a warrant against such offender, advise and persuade him to be absent himself, perhaps he may be indictable for a contempt of the law, in hindering the due course of justice. *2 Hawk. P. C. 311.*

Prison-Breaking.

IT seems the better opinion, that all prison-breaches were felonies, if the party were lawfully in prison for any cause whatsoever, whether criminal or civil, and whether he were actually within the walls of a prison, or only in the stocks, or in the custody of any person who had lawfully arrested him; and it seems not to have been any way material whether the prison did belong to the king, or to the lord of a franchise; not only for that every person who is under a lawful imprisonment, may properly enough be called the king's prisoner; but also because it is allowed, that whoever breaks from any such imprisonment, since the statute *de frangentibus prisonam*, is guilty of felony: from whence it seems clearly to follow, that he must have been in like manner guilty before that statute, the purport whereof is not to make any offences felonies which were not so before, but only to restrain some of those which were.

Stat. de frangentibus prisonam, made anno 1 Edw. 2, stat 2, and A. D. 1307. "In what case it is felony to break prison, in what not."

"Concerning prisoners which break prison, our lord the king willeth and commandeth, that none from henceforth that breaketh prison shall have judgment of life or member for breaking of prison only, except the cause for which he was taken and imprisoned did require such judgment, if he had been convict thereupon according to the law and custom of the realm, albeit in times past it hath been used otherwise." 3 Inst. 69, 70.
Kel. 87
Fitz. Coron.
134.
2 Inst. 389.

For a commentary on this statute, see 2 Hawk. P. C. 123-128, wherein the following points are considered. 1st, What shall be said to be a prison, within the meaning of this statute. 2dly, How far the imprisonment ought to be well grounded. 3dly, What shall be said to be a breaking of prison. 4thly, For what crime the party ought to be imprisoned, to make the offence of breaking the prison, within the intent of the statute. 5thly, Whether the offence of breaking prison can ever amount to high treason. 6thly, At what time and in what manner the offender is to be proceeded against. 7thly, In what manner he is to be indicted. 8thly, In what manner those are to be punished for a breach of prison, who are within the benefit of the statute.

Process.

Process.

PROCESS, (*processus, a procedendo*) is the manner of proceeding in every cause, being the writs and precepts upon every action, being either original or judicial. Sometimes that only is called the process, by which a man is called into the court, because it is the beginning or principal part thereof, by which the rest of the business is directed. Special process is that which is especially appointed for the offence by statute. The difference between process and precept, or warrant of justices, is this, the precept or warrant is only to attach or convene the party before any indictment or conviction, and may be made either in the name of the king or the justice. But the process is always in the king's name, and usually after an indictment. *Law Dict.*

STAT. 8 Hen. 6, c. 10. [A. D. 1429, intituled] "Process awarded against those which dwelling in foreign counties be indicted or appealed."

Inforced by 10 H. 6, c. 6, 3 Inst 31. The inconveniencies of indicting or appealing any person in one county that is conversant in another. "Item, Our lord the king considering how divers persons for their private revenge, and not of right, maliciously, by subtle imagination have caused and procured many of his faithful liege people falsely to be indicted and appealed of several treasons, felonies, and trespasses, before justices of the peace, and other commissioners and justices, and others having power to take indictments or appeals in divers foreign counties, liberties, and franchises of *England*, in which the said lieges be not, nor at any time were conversant nor dwelling; (2) by force of which indictments and appeals, and the processes upon them made in the said counties, franchises, and liberties, the said persons, so indicted, have been, and daily be put in *exigent*, and after outlawed, and thereupon their goods and chattels, lands and tenements forfeit, and they in great jeopardy of their lives, whereas the said persons so indicted, appealed, or put in *exigent*, or outlawed, had never knowledge of such indictments, appeals, *exigents*, or outlawries; (3) which falshood and malice daily doth abound and increase in divers counties, liberties, and franchises of *England*, in great hinderance, loss, and perpetual destruction of many of his said faithful and innocent liege people, and very likely to increase hereafter, if convenient remedy be not ordained and provided in this behalf.

Process upon indictments of persons dwelling in foreign counties. 10 H. 6, c. 6. *Set.* 2. "And therefore the same our lord the king, of his special grace, and by authority of this parliament, for ease and tranquility of his faithful lieges of this realm, hath caused to be ordained and stablished, that upon every indictment or appeal by the which any of the said lieges dwelling in other counties than there where such indictment or appeal is or shall be taken of treason, felony, and trespass, to be taken hereafter before the justices

justices of peace, or before any other having power to take such indictments or appeals, or other commissioners or justices in any county, franchise, or liberty of *England*, before any *exigent* awarded upon any indictment or appeal in the form aforesaid to be taken, that presently after the first writ of *capias* upon every such indictment or appeal awarded and returned, that another writ of *capias* be awarded, directed to the sheriff of the county, whereof he which is so indicted is or was supposed to be conversant by the same indictment, returnable before the same justices or commissioners before whom he is indicted or appealed at a certain day, containing the space of three months from the date of the said last writ, where the counties be holden from month to month; and where the counties be holden from six weeks to six weeks, he shall have the space of four months, until the day of the return of the same writ; (2) by which writ of second *capias*, be it contained and commanded to the same sheriff, to take him which is so indicted or appealed, by his body, if he can be found within his bailiwick; (3) and if he cannot be found within his bailiwick, that the said sheriff shall make proclamation in two counties before the return of the same writ, that he which is so indicted or appealed shall appear before the said justices or commissioners in the county, liberty, or franchise where he is indicted or appealed, at the day contained in the said last writ of *capias*, to answer to our lord the king, or to the party, of the felony, treason, or trespass, whereof he is so indicted or appealed; (4) after which second writ of *capias* so served and returned, if he which is so indicted or appealed come not at the day of the same writ of *capias* returned, the *exigent* shall be awarded against such persons indicted or appealed, and every of them.

Sect. 3. “ And if any *exigent* hereafter be awarded upon any such indictment or appeal against the form aforesaid, or any outlawry be upon that pronounced, as well the *exigent* so awarded, as the outlawry upon that pronounced, and every of them, shall be holden for none and void; (2) and that the party upon whom such *exigent* against the form aforesaid is awarded, or outlawry pronounced, be not endamaged, nor put to loss of his goods or chattels, lands or tenements, nor of his life.

Sect. 4. “ Provided always, That the statute made in the last parliament, of processes to be made in such case before the king in his bench, stand in his force. (2) And moreover, the same our lord the king hath granted by authority aforesaid, that every person indicted or appealed in the form aforesaid from henceforth, after that he be duly acquit by verdict, that he shall have a writ and action upon his case, against every procurer of such indictments or appeals; and like process shall be upon and in the same writ, as in a writ of trespass done with force and arms; (3) and if such procurer be attained in this behalf, that the plaintiff shall recover his treble damages.

Sect. 5. “ Provided always, That this ordinance, shall not extend to indictments or appeals taken or to be taken within the county of *Chester*.

Sect. 5. “ Provided also, That if any of the said lieges, or any of their heirs, be or shall be appealed or indicted of felony or treason, and at the time

1 Ed. 4, l. 1.
19 H. 6, l. 1.
Fitz. Process,
192.

Hob. 166.
3 Co. 59.

6 H. 6, c. 1.
An action upon the case maintainable by the party indicted or appealed against the procurer of the same,
Kel. f. 21.
Rast. 123.

A man indicted or appealed in the county

where he is
conversant
shall be pro-
ceeded as for-
merly.

time of the same felony or treason supposed, he is and was conversant within the county whereof the indictment or appeal maketh mention, the like process be made against such person so indicted or appealed, as hath been used always before this time."

Prophecies.

STAT. 5 Eliz. c. 15, [A. D. 1562, intituled] "An act against fond and fantastical prophecies."

Penalty for
publishing
any false and
fantastical
prophecy up-
on arms,
fields, badges,
&c. 3 & 4 Ed.
6, c. 15.
33 H. 8, c. 14.

"Forasmuch as sithence the expiration and ending of the statute made in the time of king *Edward the Sixth*, intituled, *An act against fond and fantastical prophecies*, divers evil disposed persons inclined to the stirring and moving of factions, seditions and rebellions within this realm, have been the more bold to attempt the like practice in feigning, imagining, inventing and publishing of such fond and fantastical prophecies, as well concerning the queen's majesty, as divers honourable personages, gentlemen and others of this realm, as was used and practised before the making of the said statute, to the great disquiet, trouble and peril of the queen's majesty, and of this her realm :

The penalty
for publishing
of any fanta-
stical prophecy
upon arms,
&c. to make
insurrection,
&c.

Sect. 2. "For remedy whereof, be it ordained and enacted by the authority of this present parliament, That if any person and persons after the first day of *May* next coming, do advisedly and directly advance, publish and set forth by witing, printing, singing, or any other open speech or deed, to any person or persons, any fond, fantastical or false prophecy, upon or by the occasion of any arms, fields, beasts, badges, or such other like things accustomed in arms, cognizances or signets, or upon, or by reason of any time, year or day, name, bloodshed or war, (2) to the intent thereby to make any rebellion, insurrection, dissension, loss of life, or other disturbance within this realm, and other the queen's dominions ; (3) That then every such person being thereof lawfully convicted according to the due course of the laws of this realm, for every such offence shall suffer imprisonment of his body, by the space of one year, without bail or mainprize, and shall forfeit for every such offence the sum of ten pounds.

The penalty
for the second
offence.

Sect. 3. "And if any such offender do after such conviction afterwards offend in any the premises, and be thereof lawfully convicted, as is aforesaid ; That then every such offender shall for his second offence and conviction, as is aforesaid, suffer imprisonment of his body without bail or mainprize during his life, and shall forfeit all his goods and chattles reals and personals : (2) the moieties of every which forfeitures shall be to the queen's

queen's highness, her heirs and successors, and the other moieties thereof to him that shall or will sue for the same in any of the queen's courts of record, by action, bill, plaint or information; in which case no essoin, wager of law, or protection shall be allowed or admitted.

Seet. 4. "And be it further enacted by the authority aforesaid, That all and every justice of assize, justice of Oyer and Determiner, and justice of peace, shall have full power and authority by vertue hereof, to enquire, hear and determine all and every offence or offences aforesaid, committed or done within the limits of their commission, contrary to the tenor and meaning of this act." What justices may hear and determine the offences aforesaid.

Seet. 5. "Provided always, and be it enacted by the authority aforesaid, That no person or persons shall at any time hereafter be impeached of any offence hereafter to be committed or done contrary to this act, unless he be therefore impeached or accused within six months next ensuing any such offence by him or them committed or done." Within what time an offender must be accused.

Public-Worship.

BY *Stat. 1 Ric. 2, c. 15*, no clergyman shall be arrested in any church or church-yard, whilst he attends to divine service; on pain of imprisoning the offender and ransom at the king's will, and gree to the party arrested. See this act at large under title **Church and Church-Yard**.

STAT. 1 Ed. 6, c. 1, [A. D. 1547, intituled] "An act against such as shall unreverently speak against the sacrament of the altar, and of the receiving thereof under both kinds."

"The king's most excellent majesty minding the governance and order of his most loving subjects to be in the most perfect unity and concord, in all things, and in especial, in the true faith and religion of God, and wishing the same to be brought to pass with all clemency and mercy on his highness part towards them, as his most princely serenity and majesty hath already declared by evident proof, to the intent that his most loving subjects provoked by clemency and goodness of their prince and king, shall study rather for love than for fear to do their duties, first to Almighty God, and then to his highness and the commonwealth, nourishing concord and love amongst themselves: (2) yet considereth and perceiveth that in a multitude all be not on that sort, that reason and the knowledge of their duties, can move them from offence, but many had need have some bridle of fear, and that the same be most contentious and arrogant religion by

The penalty for unreverend speaking against the sacrament of the body and blood of Christ, or against the receiving thereof in both kinds. The king mindeth to have unity in religion by clemency.

The blessed sacrament instituted by Christ himself, and by what words of his.

The causes of the abuse of the blessed sacrament.

The penalty for speaking unreverently of the most blessed sacrament.

for the most part, or else most blind and ignorant: (3) by the means of which sort of men, many things well and godly instituted, and to the edification of many, be perverted and abused, and turned to their own and others great loss and hindrance, and sometime to extreme destruction: the which doth appear in nothing more or sooner, than in matters of religion, and in the great and high mysteries thereof, as in the most comfortable sacrament of the body and blood of our Saviour Jesus Christ, commonly called the sacrament of the altar, and in scripture, the (a) supper and (b) table of the Lord, the (c) communion and (d) partaking of the body and blood of Christ: (4) which sacrament was instituted of no less author than of our Saviour, both God and man, when at his last supper amongst his apostles, he did take the bread in his holy hands, and did say, (e) Take you and eat this my body, which is (f) given and (g) broken for you. And taking up the (h) chalice or cup, did give thanks, and say, (i) This is my blood of the New Testament, which is shed for (k) you, and for (l) many, for the (m) remission of sins that (n) whensoever we should do the same, we should do it in the remembrance of him, and to declare and set forth his death and most glorious passion, until his coming. Of the which (o) bread whosoever eateth, or of the which cup whosoever drinketh unworthily, (p) eateth and drinketh condemnation and judgment to himself, making no difference of the Lord's body. (5) The institution of which sacrament being ordained by Christ, as is before said, and the said words spoken of it here before rehearsed, being of eternal, infallible, and

undoubted truth: yet the said sacrament (all this notwithstanding) hath been of late marvelously abused by such manner of men before rehearsed, who of wickednesses, or else of ignorance and want of learning, for certain abuses heretofore committed of some, in misusing thereof, have condemned in their hearts and speech the whole thing, and contemptuously depraved, despised or reviled the same most holy and blessed sacrament, and not only disputed and reasoned unreverently and ungodly of that most high mystery, but also in their sermons, preachings, readings, lectures, communications, arguments, talks, rhimes, songs, plays or jests, name, or call it by such vile and unseemly words, as Christian ears do abhor to hear rehearsed: (6) for reformation whereof, be it enacted by this king's highness, with the assent of the lords spiritual and temporal, and of the commons in this present parliament assembled, and by the authority of the same, That whatsoever person or persons, from and after the first day of May next coming, shall deprave, despise, or contemn the said most blessed sacrament, in contempt thereof, by any contemptuous words, or by any words of depraving, despising or reviling: or what person or persons, shall advisedly in any other wise contemn, despise or revile the said most blessed sacrament, contrary to the effects and declaration abovesaid, that then he or they shall suffer imprisonment of his or their bodies, and make

(a) 2 Cor. 11, 20. (b) 1 Cor. 10, 21. (c) 1 Cor. 10, 16. (d) 1 Cor. 16, 17. (e) Mat. 26, 26. (f) Luke 22, 19. (g) 1 Cor. 11, 24. (h) Mat. 26, 27. (i) Mar. 14, 23. (k) Mar. 14, 24. (l) Luke 28, 19. (m) Mar. 14, 24. (n) Mat. 26, 28. (o) 1 Cor. 11, 29. (p) 1 Cor. 11, 26.

fine and ransom at the king's will and pleasure. (7) And for full and effectual execution of the premises before devised, ordained and enacted by this act, be it furthermore enacted by the authority of this present parliament, That immediately after the first day of *May* next coming, the justices of peace, or three of them at the least, whereof one of them to be of the *quorum*, in every shire of this realm, and *Wales*, and all other places within the king's dominions, shall have full power and authority by virtue of this act, as well to take information and accusation by the oaths and depositions of two able, honest and lawful persons at the least, (8) and after such accusation, or information so had, to enquire by the oaths of twelve men, in every their four quarter-sessions yearly to be holden, of all and singular such accusations or informations to be had, or made of any of the offences above-said, to be committed or done after the said first day of *May*, within the limits of their commission: (9) and that upon every such accusation and information, the offender and offenders shall be enquired of, and indicted before the said justices of peace, or three of them at the least, as is aforesaid, of the said contempts and offences, by the verdict of twelve honest and indifferent men, if the matter of the said accusation or information, shall seem to the said jury good and true.

Justices of
peace may
enquire of of-
fenders.

Sec. 2. “ And it is also further enacted by the authority aforesaid, that the said justices of peace, or three of them at the least, as is aforesaid, before whom any such presentment, information and accusation shall be made or taken, as is aforesaid, shall examine the accusers what other witnesses were by, and present at the time of the doing and committing of the offence, whereof the information, accusation and presentment shall be made, and how many others than the accusers have knowledge thereof, (2) and shall have power and authority by their discretions, to bind by recognizance to be taken before them, as well the said accusers, as all such other persons whom the said accusers shall declare to have knowledge of the offences by them presented and informed, every of them in five pounds to the king, to appear before the said justices of peace before whom the offender or offenders shall be tried at the day of trial and deliverance of such offenders.

Examination
of the accus-
ers.

Sec. 3. “ And it is further enacted by the authority aforesaid, That the said justices of peace or three of them at the least, as is above-said, by virtue of this act, shall have full power and authority to make process against every person or persons so indicted, by two *capias* and an exigent, and by *capias ut legatum*, as well within the limits of their commission, as into all other shires and places of this realm, *Wales*, and other the king's dominions, as well within liberties as without, and the same process to be good and effectual in the law to all intents, constructions and purposes, (2) and upon the appearance of any of the offenders, shall have full power and authority by virtue of this act, and the commission of peace, to determine the contempts and offences aforesaid, according to the laws of this realm, and effects of this act: (3) and that the said justices of peace, or three of them at the least, as is above-said, shall have full power and authority to let any such person or persons so indicted, upon sufficient sureties, by their discretions;

12 Co. 103.
What process
shall be award-
ed against the
persons indicted.

Justices of
peace may de-
termine the
offences.

Bailment of
persons indicted.

to bail for their appearance to be tried, according to the tenor, form and effect of this act.

Señ. 4. “ Provided always, and be it enacted, That the said justices of peace, or three of them at the least, at their quarter-sessions, where any offender or offenders shall be or stand indicted of any of the contempts or offences abovesaid, shall direct and award one writ in the king’s name to the bishop of the diocese wherein the said offence or offences are supposed to be committed or done, willing and requiring the said bishop to be in his own person, or by his chancellor, or other his sufficient deputy learned, at the quarter-sessions in the said county to be holden, when and where the said offender shall be arraigned and tried, appointing to them in the said writ the day and place of the said arraignment; (2) which writ shall be of this form: *Rex, &c. episcopo L. salutem. Præcipimus tibi quod tu, cancellarius tuus, vel alius deputat. tuus sufficienter eruditus, sitis cum justic. nostris ad pacem in com nostro. B. conservand. assignat. apud D. tali die, ad sessionem nostram, ad tunc & ibm. tenend. ad dand. consilium & advisament. eisdem justiciariis nostris ad pacem, super arraignment. & deliberationem offendent. contra form. Statuti, concernen. sacrosanct. sacramentum altaris.*

A writ directed by the justices to the bishop.

Señ. 5. “ Provided always, and be it enacted by the authority aforesaid, That no person or persons shall be indicted of any of the contempts; or offences abovesaid, but only of such contempts or offences as shall be informed or presented within three months next after the said offences or offence so committed or done.

Señ. 6. “ And be it further enacted by the authority aforesaid, That in all trials, for any such offenders before the said justices, as is aforesaid, the person or persons being complained on and arraigned, shall be admitted to purge or try his or their innocency, by as many, or more witnesses in number, and of as good honesty and credence, as the witnesses be which deposed against him or them, or any of them.

Señ. 7. “ And for as much as it is more agreeable, both to the first institution of the said sacrament of the most precious body and blood of our Saviour Jesus Christ, and also more conformable to the common use and practise both of the apostles, and of the primitive church, by the space of five hundred years and more after Christ’s ascension, that the blessed sacrament should be ministred to all Christian people under both the kinds of bread and wine, than under the form of bread only: (2) and also it is more agreeable to the first institution of Christ, and to the usage of the apostles, and the primitive church, that the people being present should receive the same with the priest, than that the priest should receive it alone: (3) therefore be it enacted by our sovereign lord the king, with the consent of the lords spiritual and temporal, and the commons in this present parliament assembled, and by the authority of the same, That the said most blessed sacrament be hereafter commonly delivered and ministred unto the people within the church of *England* and *Ireland*, and other the king’s dominions under both the kinds, that is to say, of bread and wine, except necessity otherwise require: (4) and also that the priest,

The blessed sacrament shall be delivered unto the people under both kinds of bread and wine.

which

which shall minister the same, shall, at the least one day before, exhort all persons which shall be present, likewise to resort and prepare themselves to receive the same. (5) And when the day prefixed cometh, after a godly exhortation by the minister made, (wherein shall be further expressed the benefit and comfort promised to them which worthily receive the holy sacrament, and danger and indignation of God threatned to them which shall presume to receive the same unworthily, to the end that every man may try and examine his own conscience before he shall receive the same) (6) the said minister shall not without a lawful cause deny the same to any person that will devoutly and humbly desire it; any law, statute, ordinance or custom contrary thereunto in any wise notwithstanding: not condemning hereby the usage of any church out of the king's majesty's dominions. *5 & 6 Edw. 6, c. 1. Repealed by 1 Ma. Sess. 2, c. 2, and revived by 1 Eliz. c. 1, f. 14.* The usage of other churches not condemn-
ed.

By stat. 1 *Eliz. c. 2*, penalty of twelve pence a *Sunday* is incurred for not resorting to church. See this act at large under title **Common Prayer.**

By stat. 23 *Eliz. c. 1*, and 29 *El. c. 6*, a penalty of twenty pound is incurred for not going to church. See this act at large under title **Papery.**

By stat. 3 *Jac. 1, c. 4*, penalty of ten pounds is incurred for harbouring a recusant. See this act at large under title **Papery.**

By stat. 3 *Jac. 1, c. 5*, recusants convict are disabled as to offices. See this act at large under title **Papery.**

By stat. 13 & 14 *Car. 2, c. 4*, no person shall be received as a lecturer without licence from the bishop. See this act at large under title **Lecturer.**

Stat. 1 *Will. & Ma. c. 18*. See this act under title **Dissenters.**

Purveyors.

AS well before as after the Conquest, the king, upon his ancient demesnes of the crown of *England*, had houses of husbandry, and stocks for the furnishing of necessary provisions for his household, and the tenants of those manors, did by their tenures manure, till, &c. and reap the corn on the king's demesnes, mowed his meadows, &c. repaired the fences, and performed all necessary things belonging to husbandry upon the king's demesnes. In respect of which services, and to the end they might apply the same the better, they had many liberties and privileges, as that they should

not

not be sued out of the court of that manor, nor impanelled of any jury or inquest, nor appear at any other court, but only at the court of the said manor, nor be contributory to the expences of the knights of the shire who served in parliament, nor pay any toll, &c. which liberties and immunities continue to this day, although the original cause thereof is ceased. 2 *Inst.* 542, 543. Mr. Serjeant *Hawkins*, *Pl. Cr.* 114, c. 47, *sect.* 1, says, that this method being found to be troublesome and inconvenient, was by degrees disused, and afterwards the king used to appoint certain officers to buy in provisions for his household, who were called purveyors, and claimed many privileges by the prerogative of the crown, and seem to have had the pre-emption of all such victuals as were bought by any to sell again.

STAT. 12 *Car.* 2, c. 24, [*A. D.* 1660,] made, among other purposes, “for taking away purveyance.”

Purveyances
and provisions
for the
king's house-
hold, taken
away.

Seet. 12. “And whereas by like experience it hath been found, That though divers good, strict, and wholesome laws have been made in the times of sundry his majesty's most noble progenitors, some extending so far as to life, for redress of the grievances and oppressions committed by the persons employed for making provisions for the king's household, carriages and other purveyance for his majesty, and his occasions; yet divers oppressions have been still continued, and several counties have submitted themselves to sundry rates and taxes and compositions, to redeem themselves from such vexations and oppressions: (2) And forasmuch as the lords and commons assembled in parliament do find that the said remedies are not fully effectual, and that no other remedy will be so effectual and just, as to take away the occasion thereof, especially if satisfaction and recompence shall be therefore made to his majesty, his heirs and successors, which is hereby provided to his majesty's good-liking and content; his majesty is graciously pleased, That it may be enacted; (3) and be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords and commons in this present parliament assembled, That from henceforth no sum or sums of money, or other thing shall be taken, raised, taxed, rated, imposed, paid or levied, for or in regard of any provision, carriages or purveyance for his majesty, his heirs or successors.

Purveyances
for the king,
queen, &c.

Timber,
carts, carri-
ages, &c. ta-
ken away.
Altered by
13 *Car.* 2,
stat. 1, c. 8.
f. 2. 13 &
14 *Car.* 2,

Seet. 13. “And that henceforth no person or persons by any warrant, commission or authority under the great seal, or otherwise, by colour of buying or making provision or purveyance for his majesty, or any queen of *England* for the time being, or of any the children of any king or queen of *England* for the time being, or that shall be, or for his, their, or any of their household, shall take any timber, fowel, cattle, corn, grain, malt, hay, straw, victual, cart, carriage or other thing whatsoever, of any the subjects of his majesty, his heirs or successors, without the free and full consent of the owner or owners thereof, had and obtained without menace or inforcement; (2) nor shall summon, warn, take, use or require any the said subjects to furnish or find any horses, oxen, or other cattle, carts, ploughs, wains or other carriages, for the use of his majesty, his

heirs

heirs or successors, or of any queen of *England*, or of any child or children c. 20, f. 1. & of any the kings or queens of *England* for the time being, for the carrying 2 J. 2, c. 10. ing the goods of his majesty, his heirs or successors, or the said queens, or children, or any of them, without such full and free consent, as aforesaid; any law, statute, custom or usage to the contrary notwithstanding.

Stat. 14. " And be it further enacted, That no pre-emption shall be allowed or claimed in the behalf of his majesty, or of any his heirs or successors, or of any the queens of *England*, or of any the children of the royal family for the time being, in market or out of market; (2) but that it be for ever hereafter free to all and every of the subjects of his majesty, to sell, dispose or employ his said goods to any other person or persons as himself listeth, any pretence of making provision or purveyance of victual, carriages or other thing for his majesty, his heirs and successors, or of the said queens, or children, on any pretence of pre-emption in their, or any of their behalfs notwithstanding: (3) And if any person or persons shall make provision or purveyance for his majesty, his heirs or successors, or any the queens, or children aforesaid, or impress or take any such carriages or other things aforesaid, on any pretence or colour of any warrant aforesaid, under the great seal, or otherwise, contrary to the intent hereof, it shall be lawful for the justices of peace, or such two or one of them as dwell near, and to the constables of such parish or village where such occasion shall happen, at the request of the party grieved: And they are hereby enjoined to commit, or cause to be committed, the party or parties so doing and offending, to gaol, till the next sessions, there to be indicted and proceeded against for the same; and that the officers and inhabitants of the village or parish where such offence shall happen, shall be assistant therein; (4) and moreover, the party grieved shall have his action or actions against such offender or offenders, and therein recover his treble damages, and treble costs: In which action, no essoin, wager of law, aid, prayer, privilege, protection, imparlance, injunction or order of restraint shall be granted or allowed: (5) And if any person or persons shall (after notice given that the action depending is grounded upon this statute) cause or procure any action at the common law, grounded on this statute, to be delayed or stayed before judgment, by colour or means of any order, power, warrant or authority, save only of the court where such action shall be brought and depending, or after judgment had upon such action, shall cause or procure execution of such judgment to be stayed or delayed by colour or means of any order, warrant, power or authority, save only by writ of error or attaint, or order of such court where such writ of error or attaint shall be depending, That then the person so offending shall incur the pains, penalties and forfeitures ordained and provided by the statute of provision and *præmunire*, made in the sixteenth year of the reign of king *Richard* the second: (6) Provided always, That this act extend not to prejudice any of his majesty's rights, titles or duties of, in, or to, or out of any tin in the flanneries of *Devon* and *Cornwall*, nor to prejudice the ancient duties of butlerage and prize of wines; but that the same shall be in the same plight that the same were before the making of this act; any thing therein contained to the contrary notwithstanding."

No pre-emption to be allowed or claimed in behalf of the king, &c.

The penalty.

No action upon this statute to be stayed, but by order of the court where such action depends.

Præmunire. 16 R. 2, c. 5. Proviso for the flanneries, butlerage, prize.

Rape.

RAPE is an offence in having unlawful and carnal knowledge of a woman, by force and against her will: but it is said, that no assault upon a woman in order to ravish her, however shameless and outrageous it may be, if it proceed not to some degree of penetration, and also of emission, can amount to a rape; however, it is said, that emission is *prima facie*, an evidence of penetration. 1 *Hawk. P. C.* 108.

Of old time, says lord *Coke*, rape was felony, for which the offender was to suffer death; but afterwards the offence was made less penal, and the punishment changed from death to the loss of the members whereby he offended, *viz.* his eyes, *propter aspectum decoris, quibus virginem concupivit: amittit etiam testiculos, qui calorem stupri induxerunt.* And in those days, if the offender had been condemned by the country, without any redemption, he should lose his eyes and his privy members, unless she that was ravished before judgment demanded him for her husband. 2 *Inst.* 180.

Afterwards by stat. 3 *Ed. 1, c. 13*, this crime was made a trespass, subjecting the offender to two years imprisonment, and a fine, at the king's will: it was again made felony, by the 13 *Ed. 1, c. 34*; and at last, by the stat. 18 *Eliz. c. 7*, it was excluded from the benefit of clergy.

STAT. 3 *Ed. 1, c. 13.* [*A. D. 1275, intituled*] "The punishment of him that doth ravish a woman."

22 *Ed. 4, 22.* "And the king prohibiteth that none do ravish, nor take away by
Co. Lit. 123. force, any maiden within age (neither by her own consent, nor without)
b. nor any wife or maiden of full age, nor any other woman against her will;
1 *Inst.* 180. (2) and if any do, at his suit that will sue within forty days the king shall
12 Co. 37. do common right; (3) and if none commence his suit within forty days,
Hob. 91. the king shall sue; (4) and such as be found culpable, shall have two years
13 *Ed. 1,* imprisonment, and after shall fine at the king's pleasure; (5) and if they
stat. 1, c. 34. have not whereof, they shall be punished by longer imprisonment, accord-
6 R. 2, c. 6. ing as the trespasss requireth."

STAT. 13 *Ed. 1, c. 34.* [*A. D. 1285, intituled*] "It is felony to commit a rape. A married woman elopeth with an advouterer. The penalty for carrying a nun from her house."

It is felony to ravish a woman. "It is provided, that if a man from henceforth do ravish a woman married, maid, or other, where she did not consent, neither before nor after, he shall have judgment of life and of member. (2) And likewise where a man

a man ravisheth a woman married, lady, damosel, or other, with force, although she consent after, he shall have such judgment as before is said, if he be attainted at the king's suit, and there the king shall have the suit. (3) And of women carried away with the goods of their husbands, the king shall have the suit for the goods so taken away. (4) And if a wife willingly leave her husband, and go away, and continue with her advouterer, she shall be barred for ever of action to demand her dower, that she ought to have of her husband's lands, if she be convict thereupon, except that her husband willingly, and without coercion of the church, reconcile her, and suffer her to dwell with him; in which case she shall be restored to her action. (5) He that carrieth a nun from her house, although she consent, shall be punished by three years imprisonment, and shall make convenient satisfaction to the house from whence she was taken, and nevertheless shall make fine at the king's will."

6 R. 2, c. 6.
Regist. 57.
2 Roll, 247.
9 Ed. 4, f. 26.
Bro. Coron.
203.
Dyer, 256.
Fitz. Dower,
41, 72, 94,
119, 153.
Fitz. ad sur
le stat, 12, 37.
If a wife do
elope with an
advouterer,
she shall for-
feit her dow-
er.

STAT. 6 Ric. 2, c. 6. [A. D. 1382, intituled] "The penalties of the man and woman, where a woman ravished doth consent. In an appeal of rape the defendant shall not wage battel."

Taking away
of a nun.

"Item, Against the offenders and ravishers of ladies, and daughters of noblemen, and other women in every part of the said realm, in these days offending more violently, and much more than they were wont; (2) it is ordained and stablished, that wheresoever and whensoever such ladies, daughters, and other women aforesaid be ravished, and after such rape do consent to such ravishers, that as well the ravishers, as they that be ravished, and every of them, be from thenceforth disabled, and by the same deed be unable to have or challenge all inheritance, dower, or joint-tenement after the death of their husbands and ancestors. (3) And that incontinently in this case the next of the blood of those ravishers, or one of them that be ravished, to whom such inheritance, dower, or joint-tenement, ought to revert, remain, or fall after the death of the ravisher, or of her that is so ravished, shall have title immediately, that is to say, after the rape to enter upon the ravisher, or her that is ravished, and their assigns, and land-tenants in the same inheritance, dower, or joint-tenement, and the same to hold in state of inheritance. (4) And that the husbands of such women, if they have husbands, or if they have no husbands in life, that then the fathers, or other next of their blood, have from henceforth the suit to pursue, and may sue against the same offenders and ravishers in this behalf, and to have them thereof convict of life, and of member, although the same woman after such rape do consent to the said ravishers. (5) And further it is accorded, that the defendant in this case shall not be received to wage battel, but that the truth of the matter be thereof tried by inquisition of the country; (6) saving always to our lord the king, and to other lords of the said realm, all their escheats of the said ravishers, if peradventure they be thereof convict."

5 Ed. 4, f. 6.

3 Co. 61.
Plow. 45.

Bro. Parl. 89.
1 H. 6, f. 1.

3 Ed. 1, c. 13.
13 Ed. 1,
stat. 1, c. 34.

By stat. 13 *Eliz. c. 7*, carnally knowing and abusing a woman child under the age of ten years, whether with her consent or against it, is felony without benefit of clergy. See this act at large under title **Burglary**, page 446.

Recognisance.

RECOGNISANCE is a bond or obligation of record, testifying the recognisor to owe to the recognisee a certain sum of money, and is acknowledged in some court of record, or before some judge, master of the chancery, or justice of peace, &c. *West's Symbol. part 1, lib 2, sect. 149.*

By stat. 3 *Hen. 7, c. 1*, (made *A. D.* 1486,) "it is ordained, that every justice of peace within this realm, that shall take any recognisance for the keeping of the peace, that the same justice do certify, send, or bring the same recognisance at the next sessions of peace, where he is or hath been justice, that the party so bound may be called; and if the party make default, the same default then there to be recorded, and the same recognisance, with the record of the default, be sent and certified into the chancery, or afore the king in his bench, or into the king's exchequer."

By stat. 1 & 2 *Phil. & Mar. c. 13*, the recognisances in cases of felony, are to be certified to the general gaol delivery. See this act at large under title **Bail**, page 208.

STAT. 4 Geo. 3, c. 10. [A. D. 1764, intituled] "An act for the more easy discharge of recognizances estreated into his majesty's court of exchequer."

Preamble.

"Whereas many recognizances have been estreated into his majesty's court of exchequer, against persons not appearing as parties or witnesses in his majesty's courts of record at *Westminster*, or at the assizes and general quarter sessions, or other courts of record in that part of *Great Britain* called *England*, or for not prosecuting indictments there, or otherwise not performing the conditions in such recognizances contained; many of which neglects of duty have happened by the inattention of ignorant people, some of whom are imprisoned, and a great number of others liable to be so, by the process constantly issued out against them out of the courts of exchequer, and directed to the sheriffs, though no other prosecution be subsisting but merely for such forfeitures of their recognizances, from which there are no easy means at present, for poor persons, especially, to procure any discharge: for remedy whereof, be it enacted by,

by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That from and after the fifth day of May, one thousand seven hundred and sixty-four, it shall be lawful for the barons of his majesty's court of exchequer, upon affidavit and petition to be presented to them by or on the behalf of the person or persons imprisoned, or liable to be imprisoned, on the forfeiture of any such recognizances, to discharge such person or persons, by order from the said barons, without any *quietus* to be sued out for that purpose; for which order no more than one pound and one shilling shall be taken by the officer appointed to give out the same: provided that no discharge shall be given on such petitions where any debt is due to the crown, other than by the recognizances so prayed to be discharged; nor in any cases of defrauding his majesty's revenue by contraband trade, or assaulting his majesty's officers of the customs or excise in the execution of their duty, or any person or persons lawfully assisting them therein."

After 1 May, 1764, the barons of the exchequer empower to discharge, upon affidavit and petition, and without *quietus* sued, recognizances of persons entitled to into the exchequer; fee payable upon such order, 1 l. 1 s. Debts due to the crown; cases of frauds by contraband trade; and assaulting officers of the revenue; excepted.

Rescue.

RESCUE (from the old *French*, *rescourrer*, to recover) is a taking away, and setting at liberty against law, a distress taken, or a person arrested by the process, or course of law. *Co. Lit.* 160. *b.*

To make a rescue felony, the following rules are laid down by lord chief justice *Hale*; 1st, That it is necessary that the felon be in custody, or under arrest for felony; and therefore, if *A.* hinder an arrest, whereby the felon escapes, the township shall be amerced for the escape, and *A.* shall be fined for the hindrance of his taking; but it is not felony in *A.* because the felon was not taken. 1 *Hale's Hist. P. C.* 606.

So to make a rescue felony, the party rescued must be under custody for felony, or suspicion of felony; and it is all one whether he be in custody for that account by a private person, or by an officer, or warrant of a justice; for where the arrest of a felon is lawful, the rescue of him is felony; but it seems necessary, that he should have knowledge that the person is under arrest for felony, if he be in the custody of a private person. 1 *Hal. Hist. P. C.* 606.

But if he be in custody of an officer, as constable or sheriff, there, at his peril, he is to take notice of it; and so it is, if there be felons in a prison, and *A.* not knowing of it, breaks the prison, and lets out the prisoners, though he knew not that there were felons there, it is felony. 1 *Hal. Hist. P. C.* 606.

A person committed for high treason, who breaks the prison, and escapes, is guilty of felony, unless he lets others also escape whom he knows to be committed for high treason; in which case he is guilty of high treason, not in respect of his own breaking of prison, but of the rescue of the others. 2 *Hawk. P. C.* 140.

By stat. 6 *Geo. 1, c. 23, sect. 5*, rescuing felons ordered for transportation is felony without benefit of clergy. See **Transportation**.

Restitution of Stolen Goods.

THERE are, says lord Hale, three means of restitution of goods for the party, from whom they were stolen, *viz.* 1, By appeal of robbery or larceny. 2, By the stat. 21 *Hen. 8, c. 11*. And, 3, By the course of common law.

Upon an appeal of robbery or larceny, if the party were convicted thereupon, restitution of the goods contained in the appeal was to be made to the appellant, for it is one of the ends of that suit. 1 *Hale's Hist.* 538.

And hence it is, that if in an appeal of felony or robbery, the appellant omit any of the goods stolen from him, they are forfeit and confiscate to the king. 1 *H. H.* 538.

STAT. 21 *Hen. 8, c. 11*, [*A. D. 1529, intituled*] “ At what time restitution shall be made of goods stolen.”

There shall be restitution to the owner of stolen goods after the attainder of the felon. 2 *Bulstr.* 310. *Cro. El.* 661. *Kelyng*, 48.

“ Be it enacted by this present parliament, That if any felon or felons hereafter do rob, or take away any money, or goods, or chattels, from any of the king's subjects, from their person or otherwise, within this realm, and thereof the said felon or felons be indicted, and after arraigned of the same felony, and found guilty thereof, or otherwise attainted by reason of evidence given by the party so robbed, or owner of the said money, goods, or chattels, or by any other by their procurement, that then the party so robbed, or owner, shall be restored to his said money, goods, and chattels; (2) and that as well the justices of gaol-delivery, as other justices, afore whom any such felon or felons shall be found guilty, or otherwise attainted, by reason of evidence given by the party so robbed, or owner, or by any other by their procurement, have power, by this present act, to award from time to time, writs of restitution for the said money, goods, and chattels, in like manner as though any such felon or felons were attainted at the suit of the party in appeal.”

5 *Co.* 110.

Before

Before this statute, there was no aid by way of indictment for the party robbed; for though the inquest that tried the felon, would, after the finding him guilty, say, that the party robbed had made fresh suit, yet this would not intitle him to restitution of his goods, till this statute granted restitution upon evidence given by the party against the felon, as it seems, though he never made fresh suit against the felon. *Staunf. Pl. C. 167, lib. 3, c. 10* — Mr. Serjeant *Hawkins* says, that this seems agreeable to practice, and the purport of the first part of the statute; but that if it shall plainly appear to the court, that the party has been guilty of gross neglect in prosecuting the offender, it may reasonably be argued, that he is not intitled to a restitution; for the latter part of the statute, by ordaining, that writs of restitution shall be awarded as though the felon had been attainted in an appeal, seems to imply, that it is a sufficient favour, within the intention of the makers of the statute, to the prosecutor of an indictment, to give him a like remedy for a restitution of his goods, as the common law gave to the plaintiff in an appeal; but it is certain that the plaintiff in an appeal, who appears to have been guilty of such a neglect, cannot demand a restitution by the common law. And the serjeant says, that the construction he would contend for will appear more reasonable, if it be considered, that it hardly can be imagined to be the intention of the makers of the statute to give the party a greater benefit from a conviction grounded upon his own evidence, as a conviction on an indictment may be, than from a conviction on the evidence of others, as a conviction in appeal must be: however, if it shall appear to the court upon the evidence of the trial, or otherwise, that the party has been reasonably diligent in prosecuting the offence, he readily grants, that the justices may, if they think fit, in their discretion, award a restitution without making inquiry concerning the fresh suit; but this seems to be no more than they may also do in appeal, if they think fit. 2 *Hawk. P. C. 171.*

A. stole cattle and sold them at *Coventry*, in an open market, and immediately he was apprehended by the sheriff of *Coventry*, and they seized the money; and afterwards, the thief was arraigned and hanged at the suit of the owner of the cattle. And by the court, the party shall have restitution of the money notwithstanding the words of 21 *Hen. 8.* the goods stolen, &c. And *Crooke* says, that it was usual at *Newgate*. *Noy, 128.*

As to the restitution by the course of the common law, if the owner takes his goods again of the offender, to the intent to favour him, or maintain him, this is unlawful, and punishable by fine and imprisonment; but if he take them again without any such intent, it is no offence. 1 *Hale's Hist. 546.*

But after the felon is convicted, it can be no colour of crime to take his goods again, when he finds them; because he hath pursued the law upon him, and may have his writ of restitution, if he please. 1 *Hale's Hist. 546.*

Riot, Rout, and unlawful Assembly.

HOLT, Ch. J. in delivering the opinion of the court said, That the books are obscure in the definition of riots, and that he took it, that it is not necessary to say they assembled for that purpose; but there must be an unlawful assembly; and as to what act will make a riot or trespass, such an act as will make a trespass will make a riot. 11 Mod. 116, pl. 2, Trin. 6 Ann. B. R. *The queen. v. Soley*.

As if a number of men assemble with arms, *in terrorem populi*, though no act is done, it is a riot. *Hob. 91*. If three come out of an alehouse, and go armed, it is a riot. 3 H. 7, 1. *Per Holt, Ch. J.* in delivering the opinion of the court. 11 Mod. 116, 117. *The queen v. Soley*.

Serjeant *Hawkins* says, A riot seems to be a tumultuous disturbance of the peace by three persons, or more, assembling together of their own authority, with an intent mutually to assist one another against any who shall oppose them, in the execution of some enterprize of a private nature, and afterwards actually executing the same in a violent turbulent manner, to the terror of the people, whether the act intended was of itself lawful or unlawful. *Hawk. Pl. C. 155, cap. 65, f. 1*.

Serjeant *Hawkins* says, A rout seems to be, according to the general opinion, a disturbance of the peace by persons assembling together with an intention to do a thing, which if it be executed will make them rioters, and actually making a motion towards the execution thereof: but by some books, the notion of a riot is confined to such assemblies only, as are occasioned by some grievance common to all the company, as the inclosure of land in which they all claim a right of common, &c. However, inasmuch as it generally agrees with a riot, as to all the rest of the above-mentioned particulars, requisite to constitute a riot, except only in this, that it may be a complete offence without the execution of the intended enterprize, it seems not to require any farther explication. *Hawk: Pl. C. 158, cap. 65, f. 8*.

Serjeant *Hawkins* says, An unlawful assembly, according to the common opinion, is a disturbance of the peace by persons barely assembling together, with an intention to do a thing, which, if it was executed, would make them rioters, but neither actually executing it, nor making a motion toward the execution of it; but he says this seems to be much too narrow a definition; for any meeting whatsoever of great numbers of people with such circumstances of terror, as cannot but endanger the public peace, and raise fears and jealousies among the king's subjects, seems

properly to be called an unlawful assembly; as where great numbers, complaining of a common grievance, meet together armed in a warlike manner, in order to consult together concerning the most proper means for the recovery of their interests; for no one can foresee what may be the event of such assembly. *Hawk. Pl. C. 158, cap. 65, §. 9.*

If a man be in his house, and he hears that *J. S.* will come to his house to beat him, he may well make an assembly of people of his friends and neighbours to assist and aid him in safe keeping his person. *Per Fineux, Ch. J. Br. Riots, pl. 1, cites 21 H. 7, 39.*

But if a man be menaced or threatened that if he comes to the market of *B.* or to *W.* that he shall be beat, he cannot make an assembly of people to assist him to go there, and this in safeguard of his person; for he need not go there, and he may have remedy by surety of the peace; but the house of a man is to him his castle and his defence, and where he properly ought to abide, &c. *Br. Riots, pl. 2, cites 21 H. 7, 39. Per Fineux, Ch. Justice.*

Dalt. Just. cap. 137, cites S. P. Hawk. Pl. C. 158, cap. 65, sect. 10, cites *S. C.* accordingly, and says, That such violent methods cannot but be attended with the danger of raising tumults and disorders to the disturbance of the public peace.—Tho' a man may ride with arms, yet he cannot take two with him to defend himself even though his life is threatened; for he is in the protection of the law which is sufficient for his defence. *Per Holt, Ch. J. in delivering the opinion of the court. 11 Mod. 116, 117, pl. 2 Trin. 6 Ann. B. R. The queen v. Soley.*

If a number of people assemble together in a lawful manner, and upon a lawful occasion, as for electing a mayor (as it was in this case) or the like, and during the assembly a sudden affray happens, this will not make it a riot *ab initio*; but it is only a common affray. *Ld. Raym. 965. Trin. 2 Ann. Grampound Corporation's case.*

If a number of people assemble in a riotous manner to do an unlawful act, and a person, who was upon the place before upon a lawful occasion, and not privy to their first design, comes and joins himself with them, he will be guilty of a riot equally with the rest. *Per Holt, Ch. J. which Powell, J. seem to agree. Ld. Raym. Rep. 965, Trin. 2 Ann. Grampound Corporation's case.*

Holt, Ch. J. thought an assembly might meet together with such circumstances of terror as to be a riot. *2 Salk. 594, 595, pl. 4, Trin. 6 Ann. in the case of The queen v. Soley & al'.*

If several are assembled lawfully without any ill intent and an affray happens, none are guilty but such as act; but if the assembly was originally unlawful the act of one is imputable to all. *Per Holt, Ch. J. 2 Salk. 595. 6 Ann. at nisi prius in Middlesex. The queen v. Ellis.*

It seems agreed, that a number of persons, being met together at a fair, or market, or church-ale, or any other lawful and innocent occasion, happen on a sudden quarrel to fall together by the ears, they are not guilty of a riot, but of a sudden affray only, of which none are guilty, but those who actually engage in it; because the design of their meeting was inno-

cent.

cent and lawful, and the subsequent breach of the peace happened unexpectedly without any previous intention concerning it; yet it is said, that if persons innocently assembled together, do afterwards upon a dispute happening to arise among them, form themselves into parties, with promise of mutual assistance, and then make assay, they are guilty of a riot, because upon their confederating together with an intention to break the peace, they may as properly be said to be assembled together for that purpose from the time of such confederacy, as if their first coming together had been on such a design; however, it seems clear, that if in an assembly of persons met together on any lawful occasion whatsoever, a sudden proposal should be started of going together in a body to pull down a house or inclosure, or to do any other act of violence, to the disturbance of the public peace, and such motion be agreed to and executed accordingly, the persons concerned cannot but be rioters, because their associating themselves together for such a new purpose is no way extenuated by their having met at first upon another. *Hawk. Pl. C. 156, 157, cap. 65, §. 3.*

By stat. 34 *Ed. 3, c. 1*, justices of the peace shall have power to restrain rioters, and to arrest and chastise them according to their offence. See this act at large under **Justices of the Peace.**

STAT. 13 Hen. 4, c. 7, [A. D. 1411, intituled] “The justices of peace and the sheriffs shall arrest those which commit any riot, &c. inquire of them, and record their offences.”

Bio. Riots, 5. “*Item*, it is ordained, and established, That if any riot, assembly, or
7 Ed. 4, f. 18. rout of people against the law, be made in parties of the realm, that the justices of peace, three, or two of them at the least, and the sheriff or under-sheriff of the county where such riot, assembly, or rout shall be made hereafter, shall come with the power of the county (if need be) to arrest them, and shall arrest them; (2) and the same justices and sheriff, or under-sheriff, shall have power to record that which they shall find so done in their presence against the law; (3) and that by the record of the same justices and sheriff, or under-sheriff, such trespassers and offenders shall be convicted in the same
5 R. 2, stat. 1, c. 7. manner and form as is contained in the statute of forcible entries. (4)
15 R. 2, c. 2. And if it happen that such trespassers and offenders be departed before
Inquiry of the offenders. the coming of the said justices and sheriff, and under-sheriff, that the same justices, three, or two of them, shall diligently inquire within a month after such riot, assembly, or rout of people so made, and thereof shall hear and determine according to the law of the land.

Certificate of a riot, and the punishment of offenders. *Stat. 2.* “And if the truth cannot be found in the manner as is afore-said, then within a month then next following, the justices, three, or two of them, and the sheriff or under-sheriff, shall certify before the king and his council all the deed and circumstances thereof, (2) which certificate shall be of like force as the presentment of twelve; upon which certificate the said trespassers and offenders shall be put to answer, and they which shall be found guilty, shall be punished according to the discretion of the king and his council.

Stat.

Stat. 3. "And if such trespassers and offenders do traverse the matter so certified, the same certificate and traverse shall be sent into the king's bench, there to be tried and determined as the law requireth. (2) And if the same trespasses do not appear before the king and his council, or in the king's bench, at the first precept, then shall be another precept directed to the sheriff of the county, to take the said trespassers and offenders, if they may be found, and to bring them at a certain day before the king and his council, or into the king's bench. (3) And if they cannot be found, that the sheriff, or under-sheriff shall make proclamation in his full county next ensuing the delivery of the second precept, that they shall appear before the king and his said council, or in the king's bench, or in the chancery in time of vacation, within three weeks then next following. (4) And in case the same offenders come not as afore is said, and the proclamation made and returned, they shall be convict and attainted of the riot, assembly, or rout aforesaid, notwithstanding any article or ordinance made to the contrary.

A traverse of a riot triable in the king's bench.

Conviction of offenders for default of appearance.

Stat. 4. "And moreover, that the justices of peace dwelling nighest in every county where such riot, assembly, or rout of people shall be made hereafter, together with the sheriff or under-sheriff of the same county, and also the justices of assizes for the time that they shall be there in their session, in case that any such riot, assembly, or rout be made in their presence, shall do execution of this statute, every one upon pain of an hundred pounds, to be paid to the king as often as they shall be found in default of the execution of the same statute."

The penalty of the next justices omitting their office.

Raft. 383,
17 R. 2, c. 8.
2 H. 5, stat. 1,
c. 8.
11 H. 7, c. 7.
19 H. 7, c. 13.

STAT. 2 *Hen.* 5, *ft.* 1, *c.* 8, [*A. D.* 1414, intituled] "Commissions shall be awarded to inquire of a riot, and of the justices default therein."

"*Item,* Whereas it is contained in the statute made the thirteenth year of the noble king *Henry*, father to our lord the king that now is, amongst other things, that if any riot, assembly, or rout of people against the law be made in any part of the realm, then the justices of the peace, three or two of them at the least, and the sheriff or under-sheriff of the county where such riot, assembly, or rout, shall be made hereafter, should come with the power of the said county, if need were, to arrest them, and them should arrest; (2) and the same justices, sheriff, or under-sheriff should have power to record that which they found so done in their presence against the law; and that by record of the same justices, sheriff, or under-sheriff, such trespassers or offenders should be convict in manner and form as is contained in the statute of forcible entries. (3) And if it happen that such trespassers or offenders were departed before the coming of the justices, sheriff, or under-sheriff, that the same justices, three or two of them, should diligently inquire within a month after such riot, assembly, or rout of people so made, and the same hear and determine according to the law of the land; (4) and if the truth could not be found in manner as afore is said, within a month then next ensuing, the said justices, three or two of them, and the sheriff or under-sheriff, should certify before the

A rehearal of the statute of 13 H. 4, c. 7, provided against those that commit any riot, rout, or unlawful assembly.

king and his council all the deed and circumstance of the same, which certificate shall be of like force as the presentment of twelve men, upon which certificate the said trespassers and offenders shall be put to answer, (5) and they which be found guilty, should be punished according to the discretion of the king and his council. (6) And moreover, that the justices of peace dwelling nearest in every county where such rout, assembly, and riot of people should be made hereafter, together with the sheriff or under-sheriff of the same counties, and also the justices of assizes for the time that they shall be in their sessions, in case that any such riot, assembly, or rout be made in their presence, shall make execution of this statute every one of them upon pain of an *Ch.* to be paid to the king, as often as they shall be found in default of execution of the same statute. (7) And forasmuch as many riots, routs, and assemblies have been made in divers parts of the realm, since the making and proclamation of the same statute, because that the same statute hath not been put in due execution, as our sovereign lord the king hath perceived by divers and grievous complaints to him made in this present parliament; (8) the same our lord the king, willing hereof to provide a better remedy, by the advice and assent aforesaid, and at the suit of the said commons, hath ordained and stablished, that if default be found in the said two justices of the peace, or justices of assizes, and the sheriff or under-sheriff of the county where such riot, assembly, or rout shall be made, touching the execution that they ought to make by virtue of the said statute, and whereof the said statute maketh mention, that then at the instance of the party grieved, the king's commission shall go out under his great seal, to inquire as well of the truth of the case, and of the original matter for the party complainant, as of the default or defaults of the said justices, sheriff, or under-sheriff, in this behalf supposed, to be directed to sufficient and indifferent persons, at the nomination and by the direction of the chancellor of the realm of *England*; (9) and that the said commissioners presently shall return into the chancery the inquests and matters before them in this behalf taken and found; and moreover that the coroners of the same county for the time being, in which county such riot, assembly, or rout shall be made, shall make the panel upon the said commission returnable for the time that the sheriff so supposed in default shall continue in his office, (11) which coroners shall return no persons, but only such which have lands, tenements, or rents to the value of *xl.* by year at least; (12) and also that the same coroners shall return upon every of the said persons empanelled at the first day when issues be to be lost, *xxs.* at the least, and at the second day *xls.* at the least, and at the third day *c.s.* at the least, and at every day after the double at the least; which issues so returned in respect of non-appearance of such persons empanelled shall be adjudged as forfeit to the king, and leviabie to his use; (13) and if default be found in the said coroners, touching the return of such persons to be empanelled, or touching the return of such issues, as afore is said, that every of them shall forfeit to the king's use forty pounds; (14) and if it happen that the said sheriff so reputed in default, be discharged of his office at the time that such commission shall be awarded out of the chancery,

Commissions shall be awarded to inquire of the riot, and of the justices and sheriffs defaults. 4 Inst. 184.

Upon the commission the coroners shall return the inquest, and of what sufficiency the jurors shall be. What issues the coroners shall return upon the jurors and upon what penalty.

Where the sheriff and not the coroners shall return the jury.

chancery, that then the new sheriff of the same county, his successors mediate or immediate for the time being, and not the coroners of the same county, shall make the panel upon this commission, returnable in manner and form, as the said coroners should do in time when the sheriff so reputed in default continued in his office; (15) and that the same new sheriff shall incur like pain of forty pounds to the king, if any default in him be found touching the return of other persons by him empanelled, which have not lands, tenements, or rents to the value of ten pounds by year, or of returning such issues which the said coroners be above charged to return; as the said coroners are to lose to the king in this behalf. (16) A writ directed out of the chancery to inquire of riots. And that the chancellor of *England* for the time being, as soon as he may have knowledge of such riot, assembly, or rout, shall cause to be sent the king's writ to the justices of the peace, and to the sheriff or under-sheriff of the county where they be so made, that they shall put the statute in execution upon the pain contained in the same; and though that such writ come not to the said justices, sheriff, or under-sheriff, they shall not be excused of the pain aforesaid, if they make not execution of the said statute.

Sec. 2. Provided always, that the said justices, and other officers aforesaid, shall execute their offices aforesaid at the king's costs, in going and continuing in doing their said offices, by payment thereof to be made by the sheriff of the same county for the time being, by indentures betwixt the sheriff and the said justices, and other officers aforesaid, to be made of the payment aforesaid, whereof the said sheriff upon his account in the exchequer may have due allowance; (2) and that such rioters attainted of great and heinous riots, shall have one whole year's imprisonment at the least, without being let out of prison by bail, mainprize, or in any other manner during the year aforesaid; (3) and that the rioters attainted of petty riots shall have imprisonment as best shall seem to the king or to his council; (4) and that the fines of such rioters attainted, shall be by the said justices increased and put to greater sums than they were wont to be put in such cases before this time, in aid and supportation of the justices and other officers aforesaid in this behalf; (5) and that the king's liege people being sufficient to travel in the county where such routs, assemblies, or riots be, shall be assistant to the justices, commissioners, sheriff, or under-sheriff of the same county, when they shall be reasonably warned, to ride with the said justices, commissioners, and sheriff, or under-sheriff, in aid to resist such riots, routs, and assemblies, upon pain of imprisonment, and to make fine and ransom to the king; (6) and that the bailiffs of franchises shall cause to be empanelled sufficient persons as before, upon pain to lose to the king forty pounds, in case that such sufficient persons may be found within the same franchises; (7) and that like ordinances and pains shall hold place, and take effect in cities, boroughs, and other places and towns infranchised, which have justices of the peace within the cities, boroughs, towns, and other places aforesaid; (8) and that this statute shall begin to hold place presently after the proclamation thereof made. The punishment of rioters. Each able person shall be assistant to the justices and sheriff to repress riots. Bailiffs of franchises. Riots committed in cities, boroughs, and towns corporate. 19 H. 7, c. 13.

STAT. 2 Hen. 5, ft. c. 9. [A. D. 1414, intituled] "A remedy to punish him that doth commit felony, and flee into an unknown place."

"Item, Forasmuch as great and grievous complaints have been made to our sovereign lord the king, by the commons in this present parliament, of divers murders, man-slaughters, robberies, batteries, assemblies of people in great number in manner of insurrection, and of divers other rebellions and riots, and after such offences the said felons and offenders flee, and withdraw themselves into divers woods and secret places and unknown, and elsewhere, to the intent and purpose to avoid the execution of the common law, and that they might not be brought to answer; (2) whereupon, our sovereign lord the king, considering the aforesaid complaint, by the advice and assent of the lords spiritual and temporal in the same parliament assembled, hath ordained and stablished at the request of the said commons, that if any person hereafter come into the chancery, and make complaint duly, that any such felon or offender, as afore is said, flee or withdraw himself into any such place, or elsewhere, to the intent aforesaid, upon such a complaint a bill shall be sufficiently made for the king; (3) and the chancellor of *England* for the time being, after such a bill to him delivered, if he may be duly informed that such a bill containeth truth, shall have power to make according to his discretion a writ of *capias* at the king's suit, directed to the sheriff of the county or counties where the said murders, man-slaughters, robberies, batteries, and other offences be supposed by the said bill to be done and perpetrate, returnable in the said chancery at a certain day. (4) And if the person in the said writ constrained be taken by the said sheriff, or yield themselves in the same chancery, that then such person shall be put in ward or to mainprise, according to the discretion of the chancellor. (5) And moreover be it commanded to inquire of such offences, and upon that shall be done as the law requireth. (6) And if the sheriff return at the day of the *capias* returnable, that the persons in the same comprised for any of these causes aforesaid, cannot be by him taken, neither the same persons do yield themselves in the said chancery, that then the said chancellor shall cause to be made a writ of proclamation directed to the said sheriff, returnable in the king's bench at a certain day, that he shall make proclamation in two counties, that the persons named in the said writ shall come at the said day in the bench aforesaid, there to answer to the matter comprised within the said bill, upon pain to be convict of the matter comprised in the said bill; (7) and that in every such writ of proclamation shall be contained the substance of the matter comprised within the said bill: (8) And if they come not at the day of such proclamation returned, then shall they be holden and adjudged for convict and attainted as aforesaid; and if they come at the proclamation, it shall be of them inquired and done in manner as above is said.

The party accused is taken by the sheriff, or yieldeth himself.

The sheriff, returneth, that the party cannot be taken.

The suggestions of such riots shall be testified under

Self. 2. Provided always, that the suggestions of such riots be testified to the chancellor of *England* by letters sealed under the seals of two justices of the peace at the least, and the sheriff of the county where such riots shall

be made, before that the writ of *capias* be granted; (2) in which writ of *capias*, the matter which is comprised within the same bill shall be as well expressed, as in the writ of proclamation thereof to be made. (3) And if such case happen in the county palatine of Lancaster, or else in any franchise where there is a chancellor and a seal, that then the chancellor of *England* shall cause to be written or sent by the king's writ to the chancellor of such county or franchise, all the suggestion in the said bill comprised, commanding him to make such execution as in the said article is comprised; (4) to always that the king's writ shall not run out of the chancery of *England* in such a county or franchise, otherwise than hath been used in time past; (5) and that this ordinance shall stand in his full force until the end of the next parliament."

the seals of
two justices of
peace and the
sheriff.
Riots com-
mitted in a
county where
there is a
chancellor
and a seal.

Made perpet-
ual by 8 H. 6,
c. 14.

STAT. 8 Hen. 6, c. 14. [*A. D. 1429, intituled*] "Riotous persons committing of felonies, and then fleeing into secret places.

"Item, For the great and grievous complaint made to king *Henry*, late king of *England*, father to our lord the king that now is, at his parliament holden at *Leicester* the second year of his reign, by the commons of his parliament aforesaid, of divers murders, man-slaughters, robberies, batteries, assemblies of people in great number in manner of insurrections, and of divers other rebellions and riots; (2) and after such offences the said felons and offenders did flee and withdraw themselves to divers woods and secret places unknown, and elsewhere, to the intent and purpose to avoid the execution of the common law; and that they might not be brought to answer according to the process of the common law: (3) Whereupon the said late king considering the aforesaid complaint, by the advice and assent of the lords spiritual and temporal in the same parliament assembled, did obtain and stablish, at the request of the said commons, that if any after come into the chancery, and make complaint duly, that any such felon or offender as aforesaid hath fled or withdrawn him to any such place, or elsewhere, to the intent aforesaid, upon such complaint a bill shall be sufficiently made for the king. (4) And the chancellor of *England* for the time being, after such bill to him delivered, if he may be duly informed that such bill containeth truth, shall have power by his discretion to award a writ of *capias* at the suit of our lord the king, directed to the sheriff of the county or counties where the said murders, man-slaughters, robberies, batteries, and other offences be supposed by the said bill to be done and committed, returnable in the said chancery at a certain day; (5) and if the persons specified in the said writ be taken by the said sheriff, or yield themselves in the said chancery, that then such persons be put in prisons or mainprise, according to the discretion of the chancellor; (6) and moreover it shall be commanded to inquire of such offences, and upon that shall be done as the law requireth. (7) And if the sheriff return at the day of the *capias* returnable, that the persons in the same comprised for any of the same causes aforesaid, cannot be taken by him, nor the said persons do yield themselves in the said chancery, that then

Process a-
warded a-
gainst the of-
fenders.

then the said chancellor shall cause to be made a writ of proclamation, directed to the sheriff, returnable in the king's bench at a certain day, that he make proclamation in two counties, that the persons named in the said writ come at the said day into the aforesaid bench, there to answer to the matter comprised in the said bill, upon pain to be convicted of the matter comprised within the said bill; (8) and in every such writ of proclamation shall be contained the substance of the matter comprised in the said bill; (9) and if they come not at the day of such proclamation returned, then they shall be holden and adjudged for convict, and attainted as afore is said; (10) and if they come at the proclamation it shall be enquired of them, and done in the manner as afore is said. (11) Provided that the suggestions of such riots be signified to the chancellor of *England* by letters sealed under the seals of two justices of the peace at the least, and the sheriff of the county where such riots shall be, before that such writ of *capias* be granted; (12) in which writ of *capias* the matter which is comprised within the same bill shall be as well expressed, as in the writ of proclamation thereof to be made. (13) And if such a case happen in the county palatine of *Lancaster*, or elsewhere in franchises where there is a chancellor and a seal, that then the said chancellor of *England* cause to be written, or sent by the king's writ to the chancellor of such county or franchise, all the suggestion in the said bill comprised, commanding him to make such execution as in the said article is comprised; (14) so always that the king's writ out of the chancery of *England* shall not run in such county or franchise otherwise than hath been used in time passed, and that the said ordinance shall stand in his force till the end of the next parliament. (15) Our lord the king considering that divers other murders, man-slaughters, robberies, batteries, assemblies of people in great number in manner of insurrections, and divers other rebellions and riots have been made in

The statute of 2 H. 5, stat. 1, c. 9, of those that do commit murder, &c. and after flee into woods, made perpetual.

A provision where any of the said offences be committed in a place enfranchised.

divers counties of the realm since the making of such statute, not punished, because that the said statute held no force but until the end of the parliament then next following, hath ordained and stablished, by authority of this present parliament, that the said statute shall now be kept, and firmly holden for a statute for ever, as well of murders, man-slaughters, robberies, batteries, assemblies of people in great number in manner of insurrections, and divers other rebellions and riots made and committed before the beginning of this present parliament, as in time to come.

Sec. 2. Provided always, That it be testified by two justices of the peace of the counties where such riots shall be supposed, that the common fame and voice runneth in the same counties of the same riots, before that the writ of *capias* shall be awarded. (2) Provided also, that if any such case happen in the said county palatine of *Lancaster*, or elsewhere in a place enfranchised, where there is a chancellor and a seal, that then the said chancellor of such county or place enfranchised, for the time being, after complaint to him duly made and testified by a justice, or the lieutenant of a justice, and sheriff of such county palatine or place enfranchised, for the time being, in the form aforesaid, shall have like power to award a *capias* and a writ of proclamation aforesaid, as the said chancellor of *England* hath.

STAT. 19 Hen. 7, c. 13, [A. D. 1503, intituled] "Riot."

"Whereas in the parliament holden at *Westminster* the *Tuesday* the mor-^{13 H. 4, c. 7.}row next after *All Souls*, the thirteenth year of the reign of king *Henry* the fourth, among other things it was enacted, ordained, and established, That Jurors impan-
if any riot, assembly, or rout of people against the law, were made in any nelled to in-
part of the realm, that the justices of the peace, three or two of them at quire of riots,
the least, and the sheriff or under-sheriff of the county where such riot, and the issues
assembly, or rout should be done, after the same statute, should come thereupon.
with the power of the shire (if need should be) to arrest them, and them
should arrest; (2) and the same justices and sheriff, or under-sheriff, should
have power to record that that they should find so done in their presence
against the law; (3) and that by the record of the same justices and sheriff, The punish-
or under-sheriff, the same trespassers and misdoers should be convicted in ment of main-
manner and form as it is contained in the statute of forcible entries; with tainers,
divers and many other articles touching and concerning the premises, as in whereby a
the same statute made the xij. year more plainly at large it appeareth; (4) riot is not
which statute is thought good and necessary: wherefore by the advice and found.
assent of the lords spiritual and temporal, and the commons, in this present
parliament assembled, and by the authority of the same, be it therefore
ordained, established and enacted, That the said act made in the said xij. ^{2 H. 5, stat. 1,}
year of king *Henry* the fourth, concerning riots, assemblies, and routs of ^{c. 8.}
people, and all and every article and articles comprised in the same, and
also all other statutes before this time made concerning the punishment of
rioters, at the time of the making of this act being in force, from hence-
forth stand in their force, and be duly put in execution after the tenors
and purports of the same. (5) And forasmuch as in the said statute made
in the said xij. year it is not expressed of what sufficiency the jurors im-
pannelled should be, or what issues they should lose, if they appear not,
nor no mention therein made of any punishment of the maintainers and
embracers of the jurors that so shall be impannelled, should have for their
misdemeanors, if any be: (6) it is therefore furthermore enacted by the
said authority in this present parliament, That if any riot, rout, or unlaw-
ful assembly be committed and done at any time after the first day of *May*
next coming, within this realm of *England*, that the sheriff having a pre-
cept directed to him, shall return xxiv. persons dwelling within the shire
where such riot, rout, or unlawful assembly shall be so committed and
done, whereof every of them shall have lands and tenements within the
same shire to the yearly value of xxs. of charter land or freehold, or xxvis.
viii d. of copyhold, or of both, over and above all charges, for to inquire
of the said riot, rout, or unlawful assembly. (7) And he shall return upon
every person so by him impannelled, in issues, at the first day xxs. and at
the second day xls. if they appear not, and be sworn to inquire of the
premises at the first day. (8) And if default be in the sheriff or under-
sheriff, for returning of other persons, not being of the said sufficiency,
or return not issues in form afore said, that then the said sheriff shall forfeit
How many
jurors shall be
returned to in-
quire of a riot,
and of what
sufficiency
they shall be.
What issues
shall be re-
turned upon
the jurors.
The sheriff's
forfeiture for
omitting his
to duty.

Certificate of
the maintain-
ers and em-
bracers.
Carthew, 383.

The forfei-
tures of main-
tainers and
embracers,
whereby a
riot is not
found.

Twelve per-
sons, or more,
unlawfully as-
sembled, after
the last of
July, 1715,
and not dis-
persing after
commanded
by one justice,
&c. by pro-
clamation.

to our sovereign lord the king, for either default therein, xxli. (9) And if the said riot, rout, or unlawful assembly be not found by the said jury, by reason of any maintenance or embracery of the said jurors, then the same justices and the sheriff, or under-sheriff, over and above all such certificate that they must and be bound to make, according to the said statute made the said xij. year, shall in the same certificate certify the names of the maintainers and embracers in that behalf, if any be, with their misdemeanors that they know, upon pain of every of the said justices and sheriff, or under sheriff, to forfeit xx li. if the same justices and sheriff, or under-sheriff, have no reasonable excuse for non-certifying of the same; (10) which certificate so made shall be of like force and effect in the law, as if the matter contained in the same were duly found by the verdict of twelve men: (11) and every person duly proved to be a main- tainer or embracer of the same shall forfeit to our said sovereign lord xx li. and as well the same maintainers as the embracers shall be committed to ward, there to remain by the discretion of the justices."

STAT. I Geo. I, ft. 2, c. 5, [A. D. 1714, intituled] " An act for preventing tumults and riotous assemblies, and for the more speedy and effectual punishing the rioters."

SECT. 1. " Whereas of late many rebellious riots and tumults have been in divers parts of this kingdom, to the disturbance of the publick peace and the endangering of his majesty's person and government, and the same are yet continued and fomented by persons disaffected to his majesty, pre- suming so to do, for that the punishments provided by the laws now in being are not adequate to such heinous offences; and by such rioters his majesty and his administration have been most maliciously and falsely tra- duced, with an intent to raise divisions, and to alienate the affections of the people from his majesty: Therefore for the preventing and suppressing of such riots and tumults, and for the more speedy and effectual punish- ing the offenders therein; Be it enacted by the king's most excellent ma- jesty, by and with the advice and consent of the lords spiritual and tem- poral, and of the commons in this present parliament assembled, and by the authority of the same, That if any persons, to the number of twelve or more, being unlawfully, riotously, and tumultuously assembled together, to the disturbance of the publick peace, at any time after the last day of July, in the year of our Lord one thousand seven hundred and fifteen, and being required or commanded by any one or more justice or justices of the peace, or by the sheriff of the county, or his under-sheriff, or by the mayor, bailiff or bailiffs, or other head-officer, or justice of the peace of any city or town corporate, where such assembly shall be, by pro- clamations to be made in the king's name, in the form herein after di- rected, to disperse themselves, and peaceably to depart to their habita- tions, or to their lawful business, shall to the number of twelve or more (notwithstanding such proclamation made) unlawfully, riotously, and tu- multuously remain or continue together by the space of one hour after such

such command or request made by proclamation, That then such conti- shall be ad-
nuing together to the number of twelve or more, after such command or judged felons
request made by proclamation, shall be adjudged felony without benefit without bene-
of clergy, and the offenders therein shall be adjudged felons, and shall fit of clergy.
suffer death as in case of felony without benefit of clergy.

Sec. 2. “ And be it further enacted by the authority aforesaid, That How the pro-
the order and form of the proclamations that shall be made by authority clamation
of this act, shall be as hereafter followeth (that is to say) the justice of the shall be made.
peace, or other person authorized by this act to make the said proclama-
tion, shall, among the said rioters, or as near to them as he can safely
come, with a loud voice command, or cause to be commanded silence to
be while proclamation is making, and after that, shall openly and with
loud voice make or cause to be made proclamation in these words, or
like in effect :

“ **O**UR sovereign lord the king chargeth and commandeth all persons, The procla-
being assembled, immediately to disperse themselves, and peace-mation.
ably to depart to their habitations, or to their lawful business, upon the
pains contained in the act made in the first year of king *George*, for pre-
venting tumultuous and riotous assemblies.

God save the King.”

“ And every such justice and justices of the peace, sheriff, under-she- Justices, &c.
riff, mayor, bailiff, and other head-officer aforesaid, within the limits of to resort to
their respective jurisdictions, are hereby authorized, impowered and re- the place.
quired, on notice or knowledge of any such unlawful, riotous, and tu-
multuous assembly, to resort to the place where such unlawful, riotous, and
tumultuous assembly shall be, of persons to the number of twelve or more,
and there to make or cause to be made proclamation in manner aforesaid.

“ *Sec. 3.* “ And be it further enacted by the authority aforesaid, That
if such persons so unlawfully, riotously, and tumultuously assembled, or Persons so as-
twelve or more of them, after proclamation made in manner aforesaid, sembled and
shall continue together, and not disperse themselves within one hour, That not dispersing
then it shall and may be lawful to and for every justice of the peace, she- within an
riff, or under-sheriff of the county, where such assembly shall be, and also hour, to be
to and for every high or petty constable, and other peace-officer within seized.
such county, and also to and for every mayor, justice of the peace, she-
riff, bailiff, and other head-officer, high or petty constable, and other
peace-officer of any city or town corporate where such assembly shall be,
and to and for such other person and persons as shall be commanded to be
assisting unto any such justice of the peace, sheriff, or under-sheriff, mayor,
bailiff, or other head-officer aforesaid (who are hereby authorized and im-
powered to command all his majesty's subjects of age and ability to be
assisting to them therein) to seize and apprehend, and they are hereby re-
quired to seize and apprehend such persons so unlawfully, riotously, and
tumultuously continuing together after proclamation made, as aforesaid,
and forthwith to carry the persons so apprehended before one or more of

And if they make resistance, the persons killing them, &c. to be indemnified.

his majesty's justices of the peace of the county or place where such persons shall be so apprehended, in order to their being proceeded against for such their offences according to law; and that if the persons so unlawfully, riotously, and tumultuously assembled, or any of them, shall happen to be killed, maimed, or hurt, in the dispersing, seizing, or apprehending, or endeavouring to disperse, seize, or apprehend them, by reason of their resisting the persons so dispersing, seizing or apprehending, or endeavouring to disperse, seize, or apprehend them, that then every such justice of the peace, sheriff, under-sheriff, mayor, bailiff, head-officer, high or petty constable, or other peace-officer, and all and singular persons, being aiding or assisting to them, or any of them, shall be free, discharged and indemnified, as well against the king's majesty, his heirs and successors, as against all and every other person and persons, of, for, or concerning the killing, maiming, or hurting of any such person or persons, so unlawfully, riotously, and tumultuously assembled, that shall happen to be so killed, maimed or hurt, as aforesaid.

Pulling down, &c. any church, &c. felony without benefit of clergy.

1 W. & M. Sess. 1, c. 18.

Sec. 4. " And be it further enacted by the authority aforesaid, That if any persons unlawfully, riotously, and tumultuously assembled together, to the disturbance of the publick peace, shall unlawfully, and with force demolish or pull down, or begin to demolish or pull down any church or chapel, or any building for religious worship, certified and registred according to the statute made in the first year of the reign of the late king William and queen Mary, intituled, *An act for exempting their majesties protestant subjects dissenting from the church of England, from the penalties of certain laws*, or any dwelling-house, barn, stable, or other out-house, That then every such demolishing, or pulling down, or beginning to demolish, or pull down, shall be adjudged felony, without benefit of clergy; and the offenders therein shall be adjudged felons, and shall suffer death as in case of felony, without benefit of clergy.

Opposing, &c. the making such proclamation, felony without benefit of clergy.

And persons to assembled, if the proclamation be hindered, shall nevertheless suffer as felons.

Sec. 5. " Provided always, and be it further enacted by the authority aforesaid, That if any person or persons do, or shall, with force and arms, wilfully and knowingly oppose, obstruct, or in any manner wilfully and knowingly lett, hinder, or hurt any person or persons that shall begin to proclaim, or go to proclaim according to the proclamation hereby directed to be made, whereby such proclamation shall not be made, that then every such opposing, obstructing, letting, hindring, or hurting such person or persons, so beginning or going to make such proclamation as aforesaid, shall be adjudged felony without benefit of clergy, and the offenders therein shall be adjudged felons, and shall suffer death as in case of felony, without benefit of clergy; and that also every such person or persons so being unlawfully, riotously, and tumultuously assembled, to the number of twelve, as aforesaid, or more, to whom proclamation should or ought to have been made if the same had not been hindered, as aforesaid, shall likewise, in case they or any of them, to the number of twelve or more, shall continue together, and not disperse themselves within one hour after such lett or hindrance so made, having knowledge of such lett or hindrance so made, shall be adjudged felons, and shall suffer death as in case of felony, without benefit of clergy.

Sett. 6. " And be it further enacted by the authority aforesaid, That if after the said last day of *July*, one thousand seven hundred and fifteen, any such church or chapel, or any such building for religious worship, or any such dwelling-house, barn, stable, or out-house, shall be demolished or pulled down wholly, or in part, by any persons so unlawfully, riotously, and tumultuously assembled, That then, in case such church, chapel, building for religious worship, dwelling-house, barn, stable, or out-house, shall be out of any city or town, that is either a county of itself, or is not within any hundred, That then the inhabitants of the hundred in which such damage shall be done, shall be liable to yield damages to the person or persons injured and damnified by such demolishing or pulling down wholly, or in part; and such damages shall and may be recovered by action to be brought in any of his majesty's courts of record at *Westminster*, (wherein no essoin, protection, or wager of law, or any imparlance shall be allowed) by the person or persons damnified thereby, against any two or more of the inhabitants of such hundred; such action for damages to any church or chapel to be brought in the name of the rector, vicar, or curate of such church or chapel that shall be so damnified, in trust for applying the damages to be recovered in rebuilding or repairing such church or chapel; and that judgment being given for the plaintiff or plaintiffs in such action, the damages so to be recovered shall, at the request of such plaintiff or plaintiffs, his or their executors or administrators, be raised and levied on the inhabitants of such hundred, and paid to such plaintiff or plaintiffs, in such manner and form, and by such ways and means, as are provided by the statute made in the seven and twentieth year of the reign of queen *Elizabeth*, for reimbursing the person or persons on whom any money recovered against any hundred by any party robbed, shall be levied: And in case any such church, chapel, building for religious worship, dwelling-house, barn, stable, or out-house so damnified, shall be in any city or town that is either a county of itself, or is not within any hundred, that then such damages shall and may be recovered by action to be brought in manner aforesaid (wherein no essoin, protection, or wager of law, or any imparlance shall be allowed) against two or more inhabitants of such city, or town; and judgment being given for the plaintiff or plaintiffs in such action, the damages to be recovered shall, at the request of such plaintiff or plaintiffs, his or their executors or administrators, made to the justices of the peace of such city or town at any quarter-sessions to be holden for the said city or town, be raised and levied on the inhabitants of such city or town, and paid to such plaintiff or plaintiffs, in such manner and form, and by such ways and means, as are provided by the said statute made in the seven and twentieth year of the reign of queen *Elizabeth*, for reimbursing the person or persons on whom any money recovered against any hundred by any party robbed, shall be levied.

How the damages shall be made good, if any church, &c. be demolished, &c.

27 Eliz c. 13.

Sett. 7. " And be it further enacted by the authority aforesaid, That this act shall be openly read at every quarter-sessions, and at every leet or law-day.

This act to be read at the quarter-sessions, &c.

Prosecution within twelve months. *Señ. 8.* " Provided always, That no person or persons shall be prosecuted by virtue of this act, for any offence or offences committed contrary to the same, unless such prosecution be commenced within twelve months after the offence committed.

Sheriffs, &c. in Scotland to have the same power as justices, &c. have in England. *Señ. 9.* " And be it further enacted by the authority aforesaid, That the sheriffs and their deputies, stewarts and their deputies, bailies of regalities and their deputies, magistrates of royal boroughs, and all other inferior judges and magistrates, and also all high and petty constables, or other peace-officers, of any county, stewartry, city or town, within that part of *Great Britain* called *Scotland*, shall have the same powers and authority for putting this present act in execution within *Scotland*, as the justices of the peace and other magistrates aforesaid, respectively have by virtue of this act, within and for the other parts of this kingdom; and that all and every person and persons who shall at any time be convicted of any the offences aforementioned, within that part of *Great Britain* called *Scotland*, shall for every such offence incur and suffer the pain of death, and confiscation of moveables: And also that all prosecutions for repairing the damages of any church or chapel, or any building for religious worship, or any dwelling-house, barn, stable, or out-house, which shall be demolished or pulled down in whole, or in part, within *Scotland*, by any persons unlawfully, riotously, or tumultuously assembled, shall and may be recovered by summar action, at the instance of the party aggrieved, his or her heirs or executors, against the county, stewartry, city or borough respectively, where such disorders shall happen, the magistrates being summoned in the ordinary form, and the several counties and stewartries called by edictal citation at the market-cross of the head borough of such county or stewartry respectively, and that in general, without mentioning their names and designations.

Punishment of persons offending in Scotland. Damages of any church, &c. pulled down, &c. in Scotland, how to be recovered, and of whom.

To what places in Scotland this act shall extend. *Señ. 10.* " Provided, and it is hereby declared, That this act shall extend to all places for religious worship, in that part of *Great Britain* called *Scotland*, which are tolerated by law, and where his majesty king *George*, the prince and princess of *Wales*, and their issue, are prayed for in express words."

Rivers and Navigation.

STAT. 8 Geo. 2, c. 2, [A. D. 1735,] made, among other purposes, " for punishing such persons as shall wilfully and maliciously pull down or destroy locks, or other works erected by act of parliament for making rivers navigable."

Señ.

Señ. 2. “ And be it further enacted, That if any person or persons, after the said fifteenth day of *May*, shall wilfully and maliciously draw or pluck up any flood gate or flood gates, fixed or made in any wear or wears, lock or locks, erected or made, or hereafter to be erected or made, by authority of parliament, in or upon any navigable river, for preserving the navigation thereof; all and every such person or persons so offending, being thereof lawfully convicted upon the oath of one or more credible witness or witnesses, before two or more justice or justices of the peace for the county, riding, or division, where any such offence or offences shall be committed, or of the adjacent county, riding, or division, shall be sent to the house of correction, there to continue and be kept to hard labour for the space of one month.

A month's imprisonment on malicious drawing up flood gates, &c.
Made perpetual by 27 Geo. 2, c. 16.

Señ. 3. “ And for the better and more impartial trial of any indictment which shall be found, commenced and prosecuted, for the offences committed against this act, be it enacted by the authority aforesaid, That every offence aforesaid, that shall be done or committed contrary to this act, shall and may be enquired of, examined, tried, and determined in any adjacent county within that part of the kingdom of *Great Britain* called *England*, in such manner and form as if the fact had been therein committed.

Offences may be tried in any adjacent county.

Señ. 4. “ Provided that no attainder for any of the offences made felony by virtue of this act shall make or work corruption of blood, loss of dower, or forfeiture of lands or tenements, goods or chattels.

Attainder on this act not to work corruption of blood, &c.

Señ. 5. “ And be it further enacted by the authority aforesaid, That if any person or persons shall, at any time after the said fifteenth day of *May*, in the year of our Lord one thousand seven hundred and thirty-five, commit any of the offences declared to be felony by this act, and, being out of prison, shall discover and apprehend, or cause to be discovered and apprehended, one or more person or persons who shall commit any such offence or offences, declared to be felony, as aforesaid, so as he, she, or they, shall be thereof lawfully convicted, every such person or persons on conviction of the offender or offenders so to be apprehended, shall have, and is hereby intitled to his majesty's most gracious pardon for the felonies aforesaid, which he, she, or they shall have committed, at any time or times before such discovery made, which pardon shall be likewise a good bar to any appeal brought, or to be brought, for any such felony.

Person discovering and convicting others guilty of the said felonies shall be pardoned.

Señ. 6. “ And be it further enacted by the authority aforesaid, That from and after the said fifteenth day of *May*, the inhabitants of every hundred in that part of the kingdom of *Great Britain* called *England*, within which such offence or offences shall be committed, by pulling down, or otherwise destroying any turnpike gate or gates, or any post or posts, rail or rails, wall or walls, belonging to any turnpike gate or gates, or any chain, bar, or fence, or any house or houses set up or erected, or to be set up or erected, for the use or service of collecting the tolls, at any place appointed by the commissioners, or any five or more of them, acting under any act or acts of parliament enabling them to act as commissioners for amending any road or roads, highway or highways, or any lock,

The hundred to answer the damages. So much of this act as relates to turn-pikes, is repealed by stat. 7 Geo. 3, c. 40, which is under title *Highways*.

sluice,

sluice, or flood-gate, or any works erected, or to be erected, by authority of parliament, upon any navigable river, for preserving or securing the navigation thereof, shall make full satisfaction for the damages, that shall be thereby suffered; and that the said damages shall and may be recovered by action of debt, bill, plaint, or information, in any of his majesty's courts of record at *Westminster*, by and in the name of the clerk of the peace of the county for the time being, wherein such offence or offences shall be committed, without naming the Christian name, or surname, of the clerk of the peace; and the said damages, so to be recovered, shall be to the only use and behoof of the trustees, commissioners, proprietors, or undertakers, of any turnpike or navigable river, to be by them applied and disposed of to the several uses and purposes, and in such manner, as the several tolls, rates, and duties, by virtue of any act or acts of parliament made, or to be made, are or shall be applied and disposed of, the sum to be recovered against the inhabitants of such hundred as shall by this act be made liable to answer all or part thereof not exceeding for any offence the sum of twenty pounds; and all and every the inhabitants of such hundred shall be rateably and proportionably taxed for and towards an equal contribution for the relief of such inhabitant or inhabitants, against whom execution for such damages shall be had and levied; which tax shall be levied and raised by such ways and means, and in such manner and form, as is prescribed and mentioned for the levying and raising damages recovered against inhabitants of hundreds in case of robberies, in and by 27 *Eliz. c. 13*.

The said damages not to exceed 20 l. for one offence.
The inhabitants to be rateably taxed, as in Hue and Cry by 27 *Eliz. cap. 13*.
On conviction of one or more offenders in 12 months, the hundred or inhabitants to be repaid out of the tolls.

Sett. 7. " Provided always, and be it further enacted by the authority aforesaid, That where any offence shall be committed against this act, and any one or more of the said offenders shall be apprehended, and lawfully convicted of such offence, within twelve months next after such offence shall be committed, any hundred or inhabitants thereof, subject or liable to make any satisfaction for the damages that shall be sustained by any of the offences aforesaid, and who shall have made such satisfaction, shall, upon such conviction of any one or more of the said offenders within the time aforesaid, be repaid the sums they have paid for such satisfaction, out of the tolls of the turnpike which shall be pulled down; any thing herein contained to the contrary notwithstanding.

Actions commenced by a clerk of the peace not to be discontinued on his death.

Sett. 8. " And be it further enacted by the authority aforesaid, That if any clerk of the peace of or in any county within that part of *Great-Britain* called *England* shall at any time hereafter commence or prefer any such action, bill, plaint, or information, and shall after the same so sued, commenced, or preferred, happen to die or be removed out of his office before recovery and execution had, that no such action, bill, plaint, or information, sued, commenced, or preferred, shall by such displacing or death be abated or discontinued; but it shall and may be lawful to and for the clerk of the peace next succeeding in the said county, to prosecute, pursue, and follow all and every such action, bill, plaint, or information, so depending for such damages as shall be sustained by any such offence or offences as aforesaid, in such manner and form to all intents and purposes as the clerk of

the peace might have done, who first preferred the said action, bill, plaint, or information.

Sec. 9. " Provided nevertheless, That no action of debt, bill, plaint, or information, shall be had, sued, or prosecuted, to recover any damages by virtue of this act, unless information upon oath shall be made thereof, within six days, before some justice of the peace of the county, liberty, or division, where such offence or offences shall be committed, inhabiting within the said hundred, or near the same. No action for recovering damages, unless information made within 6 days, and the suit commenced in 6 months after the offence.

Sec. 10. " Provided also, That no action of debt, bill, plaint, or information shall be had, sued, or prosecuted, to recover any damages to be sustained by reason of any offence or offences to be committed contrary to this act, against any inhabitant of any hundred where such offence or offences shall be committed, except such action or suit shall be commenced within six months next after such offence shall be committed.

Sec. 18. " And be it further enacted by the authority aforesaid, That if any suit or suits shall be brought or commenced against any person or persons for any thing done in pursuance of this act, that in every such case the action shall be laid in such county where the cause of action did arise, and not elsewhere; and the defendant or defendants in such action or actions to be brought, may plead the general issue, and give this act and the special matter in evidence, at any trial to be had thereupon, and that the same was done in pursuance of and by the authority of the said act; and if it shall appear so to be done, or that such action or actions shall be brought in any other county, then the jury shall find for the defendant or defendants, and upon such verdict, or if the plaintiff shall be nonsuited, or discontinue his action after the defendant or defendants shall have appeared, or if upon demurrer judgment shall be given against the plaintiff, the defendant or defendants shall and may recover treble costs, and have the like remedy for the same, as any defendant or defendants hath and have in other cases to recover costs by law." Limitation of actions. General issue. Treble costs.

By stat. 19 *Geo. 2, c. 22*, Any person filling up havens, channels, &c. shall forfeit 5 *l.* See this act at large under title **Ballast**.

By stat. 24 *Geo. 2, c. 45*, Persons convicted of theft of 40*s.* value on board any vessel, are excluded from the benefit of clergy. See this act at large under title **Larceny**.

By stat. 4 *Geo. 3, c. 12*, Persons destroying banks, &c. shall be transported for seven years. See this act at large under title **Bank**,

Robbery.

Robbery.

ROBBERY is a felony by the common law, committed by a violent assault upon the person of another, by putting him in fear, and taking from his person his money or other goods of any value whatsoever. 3 *Inst.* 68, c. 16.

What is or amounts to a robbery in respect of the manner, or person from whom any thing is taken.

The circumstance of putting one in fear makes the difference between a robber and a cut-purse; both take it from the person, but this takes it *clam & secrete* without assault or putting in fear; and the robber by violent assault and putting in fear. 3 *Inst.* 68, cap. 16.

Wherever a person assaults another with such circumstances of terror as put him into fear, and causes him, by reason of such fear, to part with his money, the taking thereof is adjudged robbery, whether there were any weapon drawn or not, or whether the person assaulted delivered his money upon the other's command, or afterwards gave it to him upon his ceasing to use force, and begging an alms; for he was put into fear by his assault, and gives him his money to get rid of him. *Hawk. Pl. C.* 96, 97, cap. 34, sect. 9.

In the case of *Macdaniel* and others, at the *Old Baily* sessions in December 1755, *Stephen Macdaniel*, *John Berry*, *James Egan* and *James Salmon*, were indicted as accessaries before, to a robbery committed by *Peter Kelly* and *John Ellis* on the person of the said *James Salmon*. The jury found a special verdict, that *Kelly* and *Ellis* were convicted of the said robbery; that before the robbery, all the prisoners, and one *Thomas Blee*, in order to procure themselves the rewards given by act of parliament for apprehending robbers, did meet at the *Bell Inn* in *Holborn*, and agreed that the said *Blee* should procure two persons to commit a robbery on the prisoner *Salmon*; that for that purpose, they contrived that *Blee* should inform the persons so to be procured that he would assist them in stealing some linen in the parish of *St. Paul Deptford*; that in pursuance of this agreement, and with the privity of all the prisoners, the said *Blee* did procure *Ellis* and *Kelly* to go with him to *Deptford* in order to steal linen, but did not at any time before the robbery inform them of the intended robbery; that they went with *Blee* to *Deptford*, and the prisoner *Salmon* being likewise waiting there in pursuance of the agreement, they robbed him of the money and goods mentioned in the indictment: they further find, that none of the prisoners had any conversation with *Ellis* and *Kelly* previous to the robbery, but that *Macdaniel*, *Egan* and *Berry* saw them and approved of them as proper for the purpose of robbing *Salmon*. This was argued

argued before all the judges; who were unanimously of opinion, that supposing a robbery to have been committed, all the prisoners were guilty as accessaries before, except *Salmon*, who could not be accessary to the robbing of himself; but forasmuch as the goods were taken from *Salmon* in pursuance of the agreement beforementioned, they were of opinion that in legal construction he was not robbed at all, since it is of the essence of robbery, that the goods be taken against the will of the owner; although the circumstance of putting in fear is perhaps not necessary to be inserted in the indictment, at least it need not be strictly proved; for if a man is knocked down without any previous warning and thereby rendered insensible, or if he manfully resists and is overpowered without being under any fear at all, it is not the less robbery upon that account; and the prisoners were discharged of the indictment. But afterwards an indictment was found against them, and prosecuted at the expence of the crown on the representation of the judges, for a conspiracy; in which the principal facts found by the special jury in the robbery bill were charged. On this indictment they were all convicted; and the court gave judgment, that they be all set in and upon the pillory twice; that they stand committed for seven years afterward. One of them (*Egan*) lost his life in the pillory, through the resentment of the populace. And on that account, the others did not stand a second time. But they were all in *Newgate* very closely confined in pursuance of their sentence. *Fost.* 121.

The words of the indictment, *violenter & felonice cepit*, must be understood that there is an actual taking indeed, and a taking in law, and that may be when a thief receives, &c. For example: if thieves rob a true man, and finding but little about him, take it, this is an actual taking; and by means of death compel him to swear upon a book to fetch them a greater sum, which he does and delivers it to them, which they receive, this is a taking in law by them, and adjudged robbery; for fear made him to take the oath, and the oath and fear continuing, made him bring the money, which amounts to a taking in law; and in this case there needs no special indictment, but the general indictment (*Quod violenter & felonice cepit*) is sufficient. And so it is, if at the first the true man for fear delivers his purse, &c. to the thief. 3 *Inst.* 68, *cap.* 16.

Serjeant *Hawkins* says, it seems clear that he who receives my money by my delivery, either whilst I am under the terror of his assault, or afterwards while I think myself bound in conscience to give it him by an oath to that purpose, which in my fear I was compelled by him to take, may in the eye of the law, as properly be said to take it from me, as he who actually takes it out of my pocket with his own hands. *Hawk. Pl. C.* 96, *cap.* 34, *sect.* 4.

This word (*cepit*) necessarily implies, that the thief must be in possession of the thing stolen. For example: if the bag or purse of the true man be fastened to his girdle, &c. and the thief, the more easily to take the bag or purse, cuts the girdle, whereby the bag or purse falls to the ground, this is no taking; for the thief had never any possession thereof, & *sic de similibus*: but if the thief takes up the bag or purse, and in striving had

let it fall, and never took it again, this had been a taking, because he had it in his possession; for the continuance of his possession is not required by law. 3 *Inst.* 69, c. 16, S. P. *Hawk. Pl. C.* 96, c. 34, *sect.* 6. But though he is not guilty of robbery, he is highly punishable by fine and imprisonment, &c. for so enormous a breach of the peace.

The words of the indictment are (*a persona*) &c. If the true man, seeking to escape for the safeguard of his money, casts it into a bush, which the thief perceiving, takes it: this is a taking in law from the person, because it is done at one time. 3 *Inst.* 69, cap. 16, S. P. And so if he drives my cattle in my presence out of my pasture, or takes my hat which fell from my head, he may be indicted as having taken things from my person. *Hawk. Pl. C.* 96, cap. 34, *sect.* 8.

If the true man had cast off his surcoat, or other uppermost garment, and the same lying in his presence, a thief assaults him, &c. and takes the surcoat, this is robbery; for that which is taken in his presence, is in law taken from his person. 3 *Inst.* 69, cap. 16. And so it is of the horse of a true man, which stands by him; *Et sic de similibus.* 3 *Inst.* 69, cap. 16.

Upon not guilty pleaded to an indictment the evidence was, that P. and Q. met W. S. and W. T. in the highway, where they endeavoured to rob them, and for that purpose drew their swords and offered to strike them, thereupon W. S. rode away one way, and P. pursued him, and W. T. went another way, and Q. followed and robbed him out of sight or hearing of P. And it was held that P. was as principal, and committed the robbery, and he was hanged. *And.* 116, pl. 161. *Hil.* 26 *Eliz.* *Pudsey's case.*

In some cases, a man may be said to rob me, where in truth he never actually had any of my goods in his possession; as where I am robbed by several in one gang, and one of them takes my money, in which case, in judgment of law, every one of the company shall be said to take it, in respect of that encouragement which they give to another through the hopes of mutual assistance in their enterprize: nay, though they miss of their first intended prize, and one of them afterwards rides from the rest, and robs a third person in the same highway, without their knowledge, out of their view, and then returns to them, all are guilty of robbery; for they came together with an intent to rob, and to assist one another in so doing. *Hawk. Pl. C.* 96, cap. 34, *sect.* 7.

If a carrier's man or ion conspire to rob him, and do it accordingly, the carrier not being privy to it, he may sue the hundred on the statute of *Winton*; but the conspiracy may be given in evidence in mitigation of damages; *per Roll*, Ch. J. *Style* 427, *Mich.* 1654, *Matthew v. the hundred of Godalmin.*

If a man servant be robbed of his master's goods in his master's sight, this shall be taken for a robbing of the master. *Style* 156, *Mich.* 1649, *per Roll*, Ch. J. in *Wright's case.*

If one casts away his goods to save them from a robber, and the robber takes them up, and carries them away, this is a robbery done to his person; *per Roll*, Ch. J. *Sty.* 156, *Mich.* 1649, *Wright's case.*

Taking cattle from *A* which he is driving on the highway, is a taking from his person, and so a robbery; *per Powel*, justice; *Quod non fuit negatum*. 2 Salk. 641, *Green v. Goddard*.

STAT. 3 Ed. 1, c. 9, [*A. D.* 1275, intituled] "All men shall be ready to pursue felons."

"And forasmuch as the peace of this realm hath been evil observed heretofore for lack of quick and fresh suit making after felons in due manner, and namely because of franchises, where felons are received: (2) it is provided that all generally be ready and appalled, at the commandment and summons of sheriffs, and at the cry of the country, to sue and arrest felons, when any need is, as well within franchise, as without; (3) and they that will not so do, and thereof be attainted, shall make a grievous fine to the king: (4) and if default be found in the lord of the franchise, the king shall take the same franchise to himself; (5) and if default be in the bailiff, he shall have one year's imprisonment, and after shall make a grievous fine; and if he have not whereof, he shall have imprisonment of two years. (6) And if the sheriff, coroner, or any other bailiff within such franchise, or without, for reward, or for prayer, or for fear, or for any manner of affinity, conceal, consent, or procure to conceal, the felonies done in their liberties, or otherwise will not attach nor arrest such felons there, as they may, or otherwise will not do their office for favour born to such misdoers, and be attainted thereof, they shall have one year's imprisonment, and after make a grievous fine at the king's pleasure, if they have wherewith; and if they have not whereof, they shall have imprisonment of three years."

2 Inst. 171.
4 Ed. 1, stat. 2.
Officium Coronat.

13 Ed. 1, stat.
2, c. 1, 2, & 6.
28 Ed. 3, c. 11.
7 R. 2, c. 6.
27 El. c. 13.
39 El. c. 25.

STAT. 13 Ed. 1, st. 2, c. 1, [*A. D.* 1285, intituled] "Fresh suit shall be made after felons and robbers from town to town, &c."

"Forasmuch as from day to day robberies, murthers, burnings, and theft, be more often used than they have been heretofore, and felons cannot be attainted by the oath of jurors, which had rather suffer strangers to be robbed, and so pass without pain, than to indite the offenders, of whom great part be people of the same country, or at the least, if the offenders be of another country, the receivers be of places near: (2) and they do the same, because an oath is not given unto jurors of the same country where such felonies were done, and to the restitution of damages hitherto no pain hath been limited for their concealment and laches: (3) our lord the king, for to abate the power of felons, hath established a pain in this case, so that from henceforth, for fear of the pain more than for fear of any oath, they shall not spare any, nor conceal any felonies; (4) and doth command, that cries shall be solemnly made in all counties, hundreds, markets, fairs, and all other places where great resort of people is, so that none shall excuse himself by ignorance, that from henceforth every country be so well kept, that immediately, upon such robberies and

3 Inst. 197.
3 Ed. 1, c. 9.
1 Ventr. 118.

Dyer, 570.

Co. pla. 343

Raft. 406. felonies committed, fresh suit shall be made from town to town, and from
27 El. c. 13. country to country."

STAT. 13 Ed. 1, c. 2, [A. D. 1285, intituled] "Inquiry of felons and robbers, and the country shall answer if they be not taken."

The country shall answer for robbers and felons, if they be not apprehended. Latch. 127. 27 El. c. 13. Raft. 406. 39 El. c. 25. Cro. El. 142, 270, 753. Bro. Debt. 103. Goldsb. 58. 16. 7 Co. 6. 2 Inst. 569. By 27 El. c. 13, f. 2, the hundred where fresh suit is not made shall answer half the damages. A robbery done in the division of shires. 1 Sid. 11. The country shall have but forty days. 28 Ed. 3, c. 11. Cro. Jac. 106, 187, 350, 496. Cro. Car. 37.

"Likewise, when need requires, inquests shall be made in towns, by him that is lord of the town, and after in the hundred, and in the franchise, and in the county, and sometime in two, three, or four counties, in case when felonies shall be committed in the marches of shires, so that the offenders may be attainted. (2) And if the country will not answer for the bodies of such manner of offenders, the pain shall be such, that every country, that is to wit, the people dwelling in the country, shall be answerable for the robberies done, and also the damages; (3) so that the whole hundred where the robbery shall be done, with the franchises being within the precinct of the same hundred, shall be answerable for the robberies done. (4) And if the robbery be done in the division of two hundreds, both the hundreds and the franchises within them shall be answerable. And after that the felony or robbery is done, the country shall have no longer space than forty days, within which forty days it shall behove them to agree for the robbery or offence, or else that they will answer for the bodies of the offenders.

STAT. 28 Ed. 3, c. 11, [A. D. 1354, intituled] "Fresh suit and huy and cry shall be made after robbers from country to country."

"Item, because that great clamour and grievous complaints be made, as well by aliens as by denizens and merchants, and other passing through the realm of *England* with their merchandises and other goods, be slain and robbed, and namely now more than they were wont, whereof remedy hath not been made to the complainants; (2) our lord the king, considering the profit which may come to the said realm, by coming and abiding of the said merchants, aliens in the same realm, and the damage and mischief which to them and other is done daily by such manslaughters and robberies, and willing to provide for the surety and indemnity of merchants and other aforesaid, hath ordained and established by the assent of all his parliament, to the intent that merchants aliens shall have the greater will and courage to come into the said realm of *England*, and that remedy from henceforth be speedily made to such merchants and other robbed, according to the form contained in the statute late made at *Winchester*, that is to say, that solemn cry be made in all counties, hundreds, markets, fairs, and all other places where solemn assembly of the people shall be, so that none by ignorance shall excuse him, that every country from henceforth be so kept, that immediately after felonies and robberies done, fresh suit be made from town to town, and from country to country, (3) and inquest, if need be, shall

13 Ed. 1, stat.
1, c. 1, 2.

shall be also taken in the towns by him which is sovereign of the town, and after in hundreds, franchises, and in the county, and sometimes in two, three, or four counties, in case when felonies shall be done in the marches of the four counties, so that the offenders may be attainted. (4) And if the country do not answer of such offenders, the pain shall be such, that every country, that is to say, the people dwelling in the country, shall answer of the robberies done, and of the damages done; (5) so that all the hundred where the robbery shall be done, or the franchises which be within the precinct of the same hundred, shall answer of the robbery done; (6) and if the robbery be done in the division of two hundreds, both hundreds shall answer together with the franchises. (7) And longer term shall not the country have after the robbery or felony done, than forty days, within which them behoveth to make gree of the robbery, or of the offence, or that they answer of the bodies of the offenders.

The penalty of the country, if robbers offending therein be not taken within forty days.

27 El. c. 13.

By STAT. 24 Hen. 8, c. 5, If any person be indicted for killing any person attempting to rob, he shall be acquitted. See this act at large under title **Burglary**.

STAT. 27 El. c. 13, [A. D. 1585, intituled] "An act for the following of hue and cry.

"Whereas by two ancient statutes, the one made in the parliament holden at Winchester, in the thirteenth year of the reign of king Edward the first, and the other in the eight and twentieth year of the reign of king Edward the third, it was for the better repressing of robberies and felonies (amongst other things) enacted to this effect, That if the country do not answer for the bodies of such malefactors, that then the pain should be such, that is to wit, That the people dwelling in the country shall be answerable for the robberies done, and the damages, (2) so that the whole hundred where the robbery shall be done, with the franchises which are within the precinct of the same hundred, shall answer the robberies done; (3) and if the robbery chance to be done in the division of two hundreds, that then both the hundreds together, with the franchises within the precinct of them, shall be answerable, as in the said two several statutes it doth more at large appear :

Hue and cry, how and by whom to be made, and the penalty for default thereof, &c.

13 Ed. 1, Stat. 2, c. 1 and 2.

28 Ed. 3,

c. 11.

The effects of statutes touching answering for robbery.

Sett. 2. "Forasmuch as the said parts of the several statutes being of late days more commonly put in execution, than heretofore they have been, are found by experience to be very hard and extreme to many of the queen's majesty's good subjects, because by the same statutes they do remain charged with the penalties therein contained, notwithstanding their inability to satisfy the same, and though they do as much, as in reason might be required, in pursuing such malefactors and offenders, (2) whereby both large scope of negligence is given to the inhabitants and residents in other hundreds and counties, not to prosecute the hue and cry made, followed, and brought unto them, by reason they are not chargeable for any portion of the goods robbed, nor with any damages in that behalf given, (3) and also great encouragement and emboldening is likewise given unto the offenders, to commit daily more felonies and robberies, as seeing it in manner

Several inconveniencies ensuing the aforesaid statutes, touching hue and cry.

manner impossible for the inhabitants and residents of the said hundred and franchises wherein the robbery is committed, to apprehend them without the aid of the other hundreds and counties adjoining; (4) and for that also the party robbed having remedy by the aforesaid statutes for the recovering of his goods robbed, and damages against the inhabitants and residents of the hundred wherein the robbery was committed, is many times negligent and careless in prosecuting and pursuing the said malefactors and offenders: (5) our sovereign lady the queen's majesty, not willing therefore that her people should be impoverished by any such pain or penalty which should be hard or grievous to them, and having special regard to abate the power of felons, and to repress felonies; (6) doth for remedy hereof, with the consent of the lords spiritual and temporal, and of the commons in this present parliament assembled, and by the authority of the same parliament, establish and enact, That the inhabitants and residents of every, or any such hundred (with the franchises within the precinct thereof) wherein negligence, fault, or defect of pursuit, and fresh suit, after hue and cry made, shall happen to be, from and after forty days next after the end of this present session of parliament, shall answer and satisfy the one moiety or half of all and every such sum and sums of money and damages, as shall by force or virtue of the said statutes or either of them, be recovered or had against, or of the said hundred, with the franchises therein, in which any robbery or felony shall at any time hereafter be committed or done: (7) and that the same moiety shall and may be recovered by action of debt, bill, plaint, or information, in any of the queen's majesty's courts of record at *Westminster*, by, and in the name of the clerk of the peace for the time being, of, or in every such county within this realm, where any such robbery and recovery by the party or parties robbed shall be, without naming the Christian name or surname of the said clerk of the peace, (8) which moiety so recovered, shall be to the only use and behoof of the inhabitants of the said hundred where any such robbery or felony shall be committed or done.

Hob. 246.
The inhabitants of the hundred where fresh suit shall not be made, shall answer half damages.

The moiety shall be recovered by the clerk of the peace.

The death or removing of the clerk of the peace shall not excuse the suit.

SecT. 3. " And be it further enacted by the authority aforesaid, That if any clerk of the peace, of or in any county within this realm, shall at any time hereafter commence or prefer any such suit, action, or information, and shall after the same so sued, commenced, or preferred, happen to die, or to be removed out of his office, before recovery and execution had; that yet no such action, suit, bill, plaint, or information, sued, commenced, or preferred, shall by such displacing or death be abated, discontinued, or ended; (2) but that it shall and may be lawful to and for the clerk of the peace next succeeding in the said county, to prosecute, pursue, and follow all and every such action, bill, plaint, suit, and information, for the causes aforesaid, so hanging and depending in such manner and form, and to all intents and purposes, as that clerk of the peace might have done which first commenced or preferred the said suit, bill, plaint, or information.

SecT. 4. " And although the whole hundred, where such robberies and felonies are committed, with the liberties within the precinct thereof, are by the said two former statutes, charged with the answering to the party

robbed

robbed his damages; yet nevertheless, the recovery and execution by and for the party or parties robbed, is had against one or a very few persons of the said inhabitants, and he and they so charged, have not heretofore by law had any mean or way to have any contribution of or from the residue of the said hundred where the said robbery is committed, to the great impoverishment of them against whom such recovery or execution is had;

Sett. 5. "For remedy whereof, be it enacted by the authority aforeſaid, That after execution of damages by the party or parties ſo robbed had, it ſhall and may be lawful (upon complaint made by the party or parties ſo charged) to and for two juſtices of the peace (whereof one to be of the *quorum*) of the ſame county, inhabiting within the ſaid hundred, or near unto the ſame, where any ſuch execution ſhall be had, to aſſeſs and tax rateably and proportionably, according to their diſcretions, all and every the towns, pariſhes, villages, and hamlets, as well of the ſaid hundred where any ſuch robbery ſhall be committed, as of the liberties within the ſaid hundred, to and towards an equal contribution to be had and made for the relief of the inhabitant or inhabitants againſt whom the party or parties robbed, before that time had his or their execution; (2) and that after ſuch taxation made, the conſtables, conſtable, headboroughs, or headborough of every ſuch town, pariſh, village, and hamlet, ſhall by virtue of this preſent act, have full power and authority within their ſeveral limits, rateably and proportionably to tax and aſſeſs according to their abilities, every inhabitant and dweller in every ſuch town, pariſh, village and hamlet, for and towards the payment of ſuch taxation and aſſeſſment, as ſhall be ſo made upon every ſuch town, pariſh, village and hamlet, made upon every ſuch town, pariſh, village, and hamlet, as aforeſaid, by the ſaid juſtices: (3) and that if any inhabitant of any ſuch town, pariſh, village or hamlet, ſhall obſtinately reſuſe and deny to pay the ſaid taxation and aſſeſſment, ſo by the ſaid conſtables, conſtable, headboroughs or headborough taxed and aſſeſſed, that then it ſhall and may be lawful to and for the ſaid conſtables and headboroughs, and every of them within their ſeveral limits and juriſdictions, to diſtrain all and every perſon and perſons ſo reſuſing and denying, by his and their goods, and chattels; (4) and the ſame diſtreſs to ſell, and the money thereof coming to retain to the uſe aforeſaid; (5) and if the goods or chattels ſo diſtrained and ſold, ſhall be of more value than the ſaid taxation ſhall come unto, that then the reſidue of the ſaid money, over and above the ſaid taxation, ſhall be delivered unto the ſaid perſon or perſons ſo diſtrained.

A remedy for thoſe againſt whom recovery and execution is had, to have contribution. The taxation of the towns by the juſtices.

The taxation of the inhabitants by the conſtables.

Diſtraining, and ſale of diſtreſs for default of payment.

Sett. 6. "And be it further enacted, That all and every the ſaid conſtables and headboroughs, after that they have within their ſeveral limits and juriſdictions, levied and collected their ſaid rates and ſums of money ſo taxed, ſhall within ten days after ſuch collection, pay and deliver the ſame over unto the ſaid juſtices of peace, or one of them, to the uſe and behoof of the ſaid inhabitant or inhabitants for whom ſuch rate, taxation and aſſeſſment ſhall be had or made as aforeſaid; (2) which money ſo paid, ſhall by the juſtices or juſtice ſo receiving the ſame, be delivered over (upon requeſt made) unto the ſaid inhabitant or inhabitants to whoſe uſe the ſame was collected.

The conſtables ſhall deliver the money collected, to the juſtices.

Sett.

Levying of
the contribu-
tion in the
hundred
where default
of pursuit shall
be.

Sett. 7. " And be it further enacted by the authority aforesaid, That the like taxation, assessment, levying by distress and payment, as aforesaid, shall be had and done within every hundred where default or negligence of pursuit, and fresh suit shall be, for and to the benefit of all and every inhabitant and inhabitants of the same hundred where such default shall be, that shall at any time hereafter by virtue of this present act, have any damages or money levied of them, for or to the payment of the one moiety, or half of the money recovered against the said hundred, where any robbery shall be hereafter committed.

No penalty
where any of
the offenders
be appre-
hended.
March 10, 11.
1 Sid. 11.

Sett. 8. " Provided also, and be it further enacted by the authority aforesaid, That where any robbery is, or shall be hereafter committed by two, or a greater number of malefactors, and that it happen any one of the said offenders to be apprehended by pursuit to be made according to the said former mentioned laws and statutes, or according to this present act, that then, and in such case, no hundred or franchise shall in any wise incur, or fall into the penalty, loss, or forfeiture mentioned either in this present act, or in any the said former statutes, although the residue of the said malefactors shall happen to escape, and not be apprehended; any thing in this statute, or in the said former statutes to the contrary notwithstanding.

The suit shall
be commenc-
ed within one
year after the
robbery.

Sett. 9. " Provided also, that no person or persons hereafter robbed, shall take any benefit by virtue of any the said former statutes, to charge any hundred where any such robbery shall be committed, except he or they so robbed, shall commence his or their suit or action within one year next after such robbery so to be committed.

In what sort
hue and cry,
and pursuit of
felons shall be
made.
Dyer 370.

Sett. 10. " And be it further enacted by the authority aforesaid, That no hue and cry, or pursuit hereafter to be done or made by the county, or inhabitants of any hundred, shall be allowed and taken to be a lawful hue and cry, or pursuit upon or after the said felons or offenders, except the same hue and cry, or pursuit be done and made by horsemen and footmen; any usage or custom to the contrary notwithstanding.

The party
robbed shall
give notice
thereof to the
inhabitants of
some town,
&c.
3 Mod. 287.

Sett. 11. " And be it further enacted by the authority of this present parliament, That no person or persons that shall hereafter happen to be robbed, shall have or maintain any action, or take any benefit by virtue of the said two mentioned statutes, or either of them, except the same person and persons so robbed, shall with as much convenient speed as may be, give notice and intelligence of the said felony or robbery so committed, unto some of the inhabitants of some town, village or hamlet, near unto the place where any such robbery shall be committed; (2) nor shall bring or have any action upon and by virtue of any the statutes aforesaid, except he or they shall first within twenty days next before such action to be brought, be examined upon his or their corporal oath to be taken before some justice of the peace of the county where the robbery was committed, inhabiting within the said hundred where the robbery was committed, or near unto the same, whether he or they do know the parties that committed the said robbery, or any of them: (3) and if upon examination it be confessed, that he or they do know the parties that committed the said robbery,

The party
robbed exam-
ined before
a justice, whe-
ther he knew
any of the of-
fenders.
Cock. 348.
Rast. 406.
Cro. El. 142.

robbery,

robbery, or any of them, That then he or they so confessing, shall before the said action be commenced or brought, enter into sufficient bond by recognizance before the said justice before whom the said examination is had, effectually to prosecute the same person and persons so known to have committed the said robbery by indictment, or otherwise, according to the due course of the laws of this realm."

STAT. 4 *Will. & Ma. c. 8*, [A. D. 1692, intituled] "An act for the encouraging of the apprehending of highwaymen."

"Whereas the highways and roads within the kingdom of *England*, and dominion of *Wales*, have been of late time more infested with thieves and robbers than formerly, for want of due and sufficient encouragement given, and means used, for the discovery and apprehension of such offenders, whereby so many murders and robberies have been committed, that it is become dangerous in many parts of the nation for travellers to pass on their lawful occasions, to the great dishonour of the laws of this realm, and the government thereof: for remedy whereof,

Sec. 2. "Be it enacted by the king's and queen's most excellent majesties, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That from and after the five and twentieth day of *March*, one thousand six hundred ninety and three, all and every person and persons, who shall apprehend and take one or more such thieves or robbers, and prosecute him or them so apprehended and taken, until he or they be convicted of any robbery committed in or upon any highway, passage, field, or open place, shall have and receive from the sheriff or sheriffs of the county where such robbery and conviction shall be made and done, without paying any fee for the same, for every such offender so convicted the sum of forty pounds, within one month after such conviction and demand thereof made, by tendering a certificate to the said sheriff or sheriffs under the hand or hands of the judge or justices before whom such felon or felons shall be convicted, certifying the conviction of such felon or felons for a robbery done within the county of the said sheriff or sheriffs, and also that such felon or felons was or were taken by the person or persons claiming the said reward; and in case any dispute shall happen to arise between the persons so apprehending any of the said thieves and robbers touching the right and title to the said reward, that then the said judge or justices, so respectively certifying as aforesaid, shall in and by their said certificate direct and appoint the said reward to be paid unto and amongst the parties claiming the same, in such share and proportions as to the said judge or justices shall seem just and reasonable. And if it shall happen any such sheriff or sheriffs shall die, or be removed before the expiration of one month after such conviction and demand made of the said reward (not being paid as aforesaid) that then the next succeeding sheriff or sheriffs of the said county shall pay the same within one month after demand and certificate brought as aforesaid: and if default of payment of the said sum or sums of money shall happen to be made by any sheriff or sheriffs,

Reward to him that shall take an highwayman.

Extended to robberies in London and other cities, towns, and places, by 6 Geo. 1, c. 23, s. 8.

How to be
recovered.

such sheriff or sheriffs so making default shall forfeit to the person or persons, to whom such money is due as aforesaid, double the sum or sums of money he ought to have paid, to be recovered by him or them, or his or their executors or administrators in any of their majesties courts of record at *Westminster*, by action of debt, bill, plaint, or information, wherein but one imparlance, and no essoin, protection, or wager of law shall be allowed, with treble costs of suit by him or them expended in the recovery of the same.

Executors,
&c. of per-
sons killed
shall have the
reward.

Seet. 3. " And be it further enacted, That in case any person or persons shall happen to be killed by any such robber or robbers, endeavouring to apprehend or in making pursuit after him or them, that then the executors or administrators, or such person or persons to whom the right of administration of the personal estate of each person so killed shall belong (upon certificate delivered under the hands and seals of the judge or justices of assize for the county where the fact was done, or the two next justices of the peace, of such person or persons being so killed, which certificate the said judge or justices, upon sufficient proof before them made, are immediately required to give without fee or reward) shall receive the sum of forty pounds from the sheriff or sheriffs of the county where the said fact was done and committed, and, upon failure of payment thereof by the said sheriff or sheriffs, double the said sum of forty pounds, to be recovered against him or them with treble costs of suit, in manner and form as aforesaid.

Sheriffs shall
be allowed it
in their ac-
counts.

Seet. 4. " And it is hereby further enacted, That all sheriffs, their executors, or administrators, upon producing such respective certificates, and the receipts for the money by them paid in pursuance of this act, shall be allowed, and are hereby impowered to deduct, upon their accounting with their majesties, their heirs, and successors, all monies (other than the double sum and sums of money, and costs of suit) which they shall disburse as aforesaid, without any fee or reward whatsoever.

Sheriff not
having suffi-
cient to be re-
paid by the
treasury.
See also 3 Geo
2, c. 15, l. 4.

Seet. 5. " Provided always, that if, upon the account of any sheriff or sheriffs, there shall not be monies sufficient in the hands of such sheriff or sheriffs to reimburse him or them such monies paid by him or them by virtue of this act, that then the sheriff or sheriffs, having so paid the said monies, shall have the same repaid by the lord treasurer or commissioners of their majesties treasury for the time being, out of the revenue of the crown, upon certificate from the clerk of the pipe to that effect.

Highway-
man's horse,
&c. given to
the apprehen-
der.

Seet. 6. " And it is hereby further enacted, That all and every person or persons who shall so take, apprehend, prosecute, or convict such robber or robbers as aforesaid, as a further reward, shall have and enjoy to his and their proper use and behoof the horse, furniture, and arms, money, or other goods of the said robber or robbers that shall be taken with him or them; and their majesties right or title, bodies politic or corporate, or the right or title thereunto of the lord of any manor, liberty, or franchise, or of him or them lending or letting the same to hire to any such robber or robbers, in any wise notwithstanding. Provided always, that this clause, or any thing therein contained, shall not be construed to extend to take away the right of any person or persons to such horses, furniture,

ture, and arms, money, or other goods, from whom the same were before feloniously taken.

Stat. 7. "And be it further enacted, That if any person or persons, being out of prison, shall, from and after the said five and twentieth day of *March*, commit any robbery, and afterwards discover two or more persons, who already hath or hereafter shall commit any robbery, so as two or more of the persons discovered shall be convicted of such robbery, any such discoverer shall himself have, and is hereby intituled to, the gracious pardon of their majesties, their heirs, and successors, for all robberies which he or they shall have committed at any time or times before such discovery made; which pardon shall be likewise a good bar to any appeal brought for any such robbery."

Person concerned discovering two others, pardoned.

Stat. 6 Geo. 1, c. 23, [A. D. 1719] made, among other purposes, "for preventing robbery."

Stat. 8. "And whereas frequent robberies have been lately committed in the streets of *London* and *Westminster*, and other cities, towns and places, and doubts have arisen whether any reward could be allowed to persons concerned in the apprehending, prosecuting, and convicting such offenders, which may prove a discouragement to persons who otherwise may be willing to undertake the same: be it hereby enacted by the authority aforesaid, That the streets of *London* and *Westminster*, and other cities, towns and places, shall be deemed and taken to be highways to all intents and purposes, within the intent and meaning of an act made in the fourth and fifth years of the reign of their late majesties king *William* and queen *Mary*, [intituled, *An act for the encouraging the apprehending of highway-men*;] and all certificates to be hereafter signed upon convictions for robbery, shall be signed and paid without any deduction, fee, or reward to be taken for the same, excepting any sum not exceeding five shillings for the writing and drawing thereof, and that as well where any offender or offenders plead guilty, as where they are convicted on evidence; and if any person or persons, under the pretence of signing or procuring to be signed any such certificate, or on account of payment of the money allowed therein, shall take any fee or reward for the same, other than as aforesaid, every such person or persons offending therein, shall forfeit and pay the sum of forty pounds, to be recovered by action of debt, bill, plaint, suit, or information in any of his majesty's courts of record at *Westminster*, where no essoin, protection, or wager of law shall be allowed, or any more than one imparlance; such forfeiture to be to the use of the person or persons entitled to the said certificate, on the account of which such fee or reward was taken, as aforesaid."

The streets of London, Westminster, &c. shall be deemed highways within the 4 & 5 W. & M. c. 8.

And all certificates upon conviction for robbery shall be paid without fee; except 5 s. for writing, and persons taking more shall forfeit 40 l.

By *stat. 7 Geo. 2, c. 21*, Person assaulting with intent to rob shall be transported for seven years. See this act at large under **Assault and Battery**.

STAT. 8 Geo. 2, c. 16, [A. D. 1735, intituled] "An act for the amendment of the law relating to actions on the statute of Hue and Cry."

Preamble, re-
citing the acts
13 Edw. 1,
and 27 Eliz.
c. 13.

After 24 June,
1735, no per-
son to sue the
hundred in
case of rob-
bery,

without first
giving notice
to a constable,
&c. describ-
ing the felon,

and publish-
ing the case in
the L. Gazette
within 20
days after the
robbery,

and giving se-
curity of 100l.
to the high
constable, to
pay costs, if
cast.

"Whereas by the laws now in being, the proceedings upon a statute made in the thirteenth year of the reign of king *Edward* the first, com-
monly called *The Statute of Hue and Cry*, and another statute made in the
twenty-seventh year of the reign of queen *Elizabeth*, intituled, *An act for
the following of Hue and Cry*, are attended with many and great inconve-
nencies to the subjects: for remedy thereof, be it enacted by the king's
most excellent majesty, by and with the advice and consent of the lords
spiritual and temporal, and commons, in this present parliament assembled,
and by the authority of the same, That from and after the twenty-fourth
day of *June*, in the year of our Lord one thousand seven hundred and
thirty-five, no person or persons shall have or maintain any action against
any hundred, or take any benefit by virtue of the said statutes, or either
of them, unless he, she, or they, shall, over and besides the notice already
required by the last of the above-mentioned statutes to be given of any
robbery, with as much convenient speed as may be after any robbery on
him, her, or them committed, give notice thereof to one of the constables
of the hundred, or to some constable, bosholder, headborough, or ty-
thingman of some town, parish, village, hamlet, or tything, near unto
the place wherein such robbery shall happen, or shall leave notice in
writing of such robbery at the dwelling-house of such constable, bosholder,
headborough, or tythingman, describing in such notice, to be given or
left as aforesaid, so far as the nature and circumstances of the case will
admit, the felon or felons; and the time and place of the robbery; and
also shall, within the space of twenty days next after the robbery commit-
ted, cause public notice to be given thereof in the *London Gazette*, therein
likewise describing, so far as the nature and circumstances of the case will
admit, the felon or felons, and the time and place of such robbery, to-
gether with the goods and effects, whereof he, she, or they was or were
robbed; and shall also, before any such action be commenced, go before
the chief clerk or secondary, or the filazer of the county wherein such
robbery shall happen, or the clerk of the pleas of that court wherein such
action is intended to be brought, or their respective deputies, or before
the sheriff of the county wherein the robbery shall happen, and enter into
a bond to the high constable or high constables of the hundred in which
such robbery shall be committed, in the penal sum of one hundred pounds,
with two sufficient sureties, to be approved of by such chief clerk, sec-
ondary, filazer, or clerk of the pleas, or their respective deputies, or the
sheriff of the said county, with condition for securing to such high con-
stable or high constables (who are hereby impowered and required to
enter, or cause to be entered, an appearance, and also to defend such ac-
tion, as herein after is mentioned) the due payment of his or their costs,
after the same shall be taxed by the proper officer, in case that he, she, or
they (the plaintiff or plaintiffs in such action) shall happen to be nonsuited,
or shall discontinue his, her, or their action, or in case that judgment shall

be

be given against such plaintiff or plaintiffs on demurrer, or that a verdict shall be given against him, her, or them.

Sec. 10. "And be it enacted by the authority aforesaid, That when any such bond, as above-mentioned, shall be entered into before the said sheriff, such sheriff shall immediately certify the same in writing to the chief clerk or secondary in the court of king's bench, or his or their deputy, or to the filazer of that county wherein such robbery shall be committed, or his deputy, in case the action be intended to be brought in the court of common pleas, or, if in the court of exchequer, to the clerk of the pleas, or his deputy; which certificate shall be delivered, by the party or parties robbed, to the said chief clerk or secondary, or his or their deputy, or to such filazer, or his deputy, or to such clerk of the pleas, or his deputy, before any process shall issue for the commencement of such suit as aforesaid; and such chief clerk, secondary, filazer, or clerk of the pleas, or their respective deputies, or the said sheriff, shall not take any greater fee or reward for making such bond than five shillings over and above the stamp duties; nor shall any sheriff take any greater fee or reward for making, nor shall any such chief clerk, secondary, filazer, or clerk of the pleas, or their respective deputies, take any greater fee or reward for receiving and filing, such certificate, than two shillings and six-pence; and such chief clerk, secondary, filazer, or clerk of the pleas, or their respective deputies, and sheriff, as aforesaid, are hereby required to deliver over *gratis* (upon reasonable request made for that purpose) all and every such bonds, to be by them respectively taken pursuant to this present act, to the high constable or high constables to whose use the same shall be taken, as aforesaid.

The sheriff to certify such bond,

and the certificate thereof to be delivered to the chief clerk, &c. before process granted.

The fees.

The bond to be delivered gratis to the high constable.

Sec. 3. "And be it further enacted by the authority aforesaid, That no hundred, or franchise therein, shall be chargeable by virtue of the above-mentioned or any other statute, if one or more of the felons, by whom such robbery shall be committed, be apprehended within the space of forty days next after such public notice given in the *London Gazette* as aforesaid.

Hundred not chargeable, if one of the felons be apprehended in 40 days after notice in the Gazette.

Sect. 4. "Be it likewise enacted by the authority aforesaid, That no process for appearance in any action to be brought upon the said statutes, or either of them, against any hundred, shall be served on any inhabitant thereof, save only upon the high constable or high constables of the hundred wherein the robbery shall happen, who is and are hereby required to cause public notice thereof to be given in one of the principal market towns within such hundred on the next market day after he or they shall be served with such process, or if there shall happen to be no market town within such hundred then in some parish church within the hundred immediately after divine service on the *Sunday* next after his or their being served with such process, and he or they is and are also hereby empowered and required to enter, or cause to be entered, an appearance in the said action, and also to defend the same for and on behalf of the inhabitants of the said hundred, as he or they shall be advised; and in case the plaintiff or plaintiffs in such action shall recover and obtain judgment therein, that then

High constable only to be served with the process, who is to give public notice thereof on the next market day,

or in the parish church,

and shall enter appearance.

If the plaintiff recover,

then no process of execution shall be served on any particular inhabitant or inhabitants of the said hundred, or any franchise within the precinct thereof, nor on the said high constable or high constables; but the sheriff or his officer shall, upon the receipt of any writ or writs of execution to him directed in pursuance of the said judgment (instead of serving the said writ or writs on any inhabitant or inhabitants) cause the same to be produced and shewn *gratis* unto two justices of the peace of the county, riding, or division (whereof one to be of the *quorum*) and residing within the said hundred, or near unto the same, who shall thereupon with all

convenient speed cause such taxation and assessment to be made, and to be levied and collected in such manner as is prescribed in and by the aforesaid statute made in the twenty-seventh year of the reign of queen *Elizabeth*, in which taxation and assessment there shall be provided for and included, over and above what the costs and damages recovered by the plaintiff or plaintiffs in such action shall amount to, all such just and necessary expences which any high constable or high constables of any hundred hath or have been, or shall be at, in having defended any such action as aforesaid, claim being made thereto by such high constable or high constables before the said justices, upon due notice being given to him or them by the said justices for that purpose; and the sums of money so to be levied and collected, shall be paid over and delivered (by such officer or officers, as by the said statute made in the twenty-seventh year of

the reign of queen *Elizabeth*, are to levy and collect the same) within ten days after such collection, to the sheriff of the county wherein the robbery shall happen, to the use and behoof of the plaintiff or plaintiffs in such action, for so much as the costs and damages by him, her, or them recovered, shall amount to, and to the use and behoof of the said high constable or high constables, for so much as his or their expences in defending the said action shall amount to, of which the said high constable or high constables shall give in an account, and make due proof upon oath, to the satisfaction of the said justices, before any such taxation and assessment shall be made for the reimbursing such high constable or high constables (which oath the said justices are hereby authorized and required to administer) and shall in such expences have no further allowance toward paying an attorney to defend the said action, than what such attorney's bill shall be taxed at by the proper officer of that court where such action shall be brought, which the said high constable or high constables shall cause to be taxed for that purpose.

Sett. 5. "And be it also enacted by the authority aforesaid, That the sum or sums of money which shall be paid over and delivered to the sheriff of the county, as is herein before-mentioned, shall (upon reasonable request made) be by him paid and delivered over to the several parties who shall be intitled to receive the same, without any deduction, fee, or reward whatsoever.

Sett. 6. "And that sufficient time may not be wanting for such taxation and assessment to be duly made, and for the money to be levied and collected thereupon, after such writ or writs of execution shall be shewn to such

the sheriff to
shew the writ
of execution
to two justices,

who are to tax
and levy the
charge as by
stat. 27 Eliz.

The money to
be paid in 10
days after col-
lection, to the
sheriff, for the
use of the
plaintiff, &c.

The money to
be paid with-
out fee.

such justices, and before the sheriff shall be obliged to make a return thereof; be it enacted by the authority aforesaid, That no sheriff shall be called upon or required to make any return to any such writ or writs of execution, as shall issue or be made out upon any judgment, which shall be recovered in an action brought against any hundred, by virtue of the above-mentioned statutes, or either of them, until after the expiration of sixty days next after the day whereupon such writ or writs shall be delivered to the said sheriff, who is hereby required to indorse, on the back thereof, the day on which he received the same.

Sheriff not obliged to make a return to the writ, till 60 days after delivery.

Sett. 7. " And whereas it is reasonable that the said high constable or high constables should be indemnified as to all charges which he or they should necessarily expend in defending any suit in pursuance of this present act, and that provision should be made for reimbursing him or them, not only all such expences as shall be over and above the taxed costs to be paid by the plaintiff or plaintiffs in case of a nonsuit, or discontinuance, or judgment on demurrer against him, her, or them, or verdict for the defendants, as aforesaid, but even such taxed costs also, in case the plaintiff or plaintiffs, and his, her, or their sureties, who shall be bound for the payment thereof, shall happen to become insolvent; be it therefore enacted by the authority aforesaid, That if any plaintiff or plaintiffs, in any action to be brought against any hundred upon the statutes above-mentioned, or either of them, shall be nonsuited, or shall discontinue his, her, or their action, or shall have a judgment on demurrer given, or a verdict pass, against him, her, or them, it shall and may be lawful for any two justices of the peace (such as are herein before mentioned) upon complaint to them made for that purpose, and upon an account given in and by such high constable, or high constables, and proof made upon oath to the satisfaction of the said justices, of such expences necessarily laid out as aforesaid (which oath the said justices are hereby impowered and required to administer) to make and cause such taxation and assessment to be made, and to be levied and collected in such manner, as is directed in and by the abovementioned statute, made in the twenty-seventh year of the reign of queen *Elizabeth*, as aforesaid, in order thereby to reimburse such high constable or high constables all such charges as he or they shall have necessarily expended in defending such action, wherein such plaintiff or plaintiffs shall have been nonsuited, or shall have discontinued his, her, or their action, or against whom judgment shall have been given upon demurrer, or a verdict shall have been given, over and above the costs in those cases to be taxed as aforesaid; and in case it shall be made appear upon oath to the said justices of peace (which oath the said justices are hereby also impowered and required to administer) to their satisfaction, that such plaintiff or plaintiffs, and also his or their sureties, is and are insolvent, so that the said high constable or high constables can have no relief, as to such taxed costs by them expended in such defence as aforesaid, (save only by the power herein after given to the said justices) it shall and may be lawful to and for such two justices of the peace to make and cause a taxation and assessment to be made, and to be levied and collected, in the same

How the high constable shall be reimbursed if the plaintiff be nonsuited, &c.

manner as is directed in and by the aforesaid statute made in the reign of queen *Elizabeth*, in order thereby to reimburse such high constable or high constables such taxed costs, as, by reason of such insolvency, he or they shall not be able to recover and receive of and from the plaintiff or plaintiffs in the action, or his or their sureties, as aforesaid.

Money levied for reimbursing the high constable to be paid within 10 days.

Sett. 8. " And be it further enacted by the authority aforesaid, That the several sum or sums of money, which shall be rated and assessed, and levied, and collected, as aforesaid, for the reimbursement of the expences necessarily sustained by any high constable or high constables, in defence of any action brought against the hundred, upon the statutes above mentioned, or either of them, in case of any judgment given against the plaintiff or plaintiffs, shall be paid, within ten days after such collection, unto the said justices, or one of them, to the use and behoof of such high constable or high constables, to whom the said justices shall upon request pay and deliver over the same.

101. Reward for apprehending a felon, so as to indemnify the hundred.

Sett. 9. " And to the intent that Hue and Cry may be made with more diligence and effect, and other persons encouraged to take such felon or felons, be it further enacted by the authority aforesaid, That any person or persons who shall apprehend such felon or felons, within the time herein before limited for that purpose, whereby the hundred hath been actually indemnified or discharged from any such action, as aforesaid, shall upon due proof thereof upon oath made before such two justices as aforesaid (which oath the said justices are hereby also impowered and required to administer) be intitled to the reward of ten pounds (which sum shall be raised upon the hundred by a taxation and assessment, to be made, and to be levied and collected in the same manner, as the other sums of money by this present act appointed to be raised upon the hundred are directed to be assessed, levied, and collected) and such sum of ten pounds, which shall be so rated, assessed, levied, and collected, as aforesaid, shall be paid unto such two justices of the peace, within ten days next after the same shall be so levied and collected, to the use of the person or persons who shall be thereunto intitled, as a reward for having so apprehended such felon or felons as aforesaid; and such justices shall, upon reasonable request made for that purpose, pay over and deliver the said sum to such person or persons accordingly, in such shares and proportions as the said justices shall think reasonable; provided always, That such person or persons, so intitled to such reward, shall not be thereby rendered incapable to be a witness in any such action.

How the assessments are to be made.

Sett. 10. " And be it also enacted by the authority aforesaid, That the justices of peace, by whom such taxations and assessments, as aforesaid, shall, in pursuance of the said statute made in the twenty-seventh year of the reign of queen *Elizabeth*, and also of this present act, be made, shall limit and appoint at their discretion some certain reasonable time within which such taxations and assessments shall be levied and collected, which time shall not exceed thirty days; and also that if any such officer or officers, who are to levy and collect such taxations and assessments, as aforesaid, shall refuse or neglect to levy and collect the same within such time

Penalty on collectors not doing their duty.

as shall be limited and appointed by the said justices of peace for their doing thereof, or shall refuse or neglect to pay and deliver over the sums of money, so levied and collected, to the said sheriff, and also to the said justices, in such manner as the same in the several cases herein before mentioned are respectively directed to be paid, within the respective times herein before limited for such payment thereof, every such officer shall for every such refusal or neglect forfeit double the sum appointed to be by him levied and collected as aforesaid.

Sett 11. " And whereas by the above mentioned statutes it is enacted, That fresh suit and Hue and Cry shall be made and pursued, and in what manner the same shall be, yet no particular person or persons is thereby expressly required to make and cause such Hue and Cry and pursuit to be made, whence it hath often happened, that the same hath been so much neglected and delayed, that felons have had time to make their escape, and the intention of the said statutes hath been thereby in great measure frustrated; be it further enacted by the authority aforesaid, That every constable, bosholder, headborough, or tythingman, to whom notice shall be given, or at whose dwelling-house notice of any robbery shall be left, as aforesaid, and that every constable of the hundred, and every constable, bosholder, headborough, or tythingman, of any town, parish, village, hamlet, or tything, within the hundred or the franchises within the precinct thereof, wherein such robbery shall happen, as soon as the same shall come to his knowledge, either by notice from the party or parties robbed, or from any other person or persons to whom notice shall be given thereof pursuant to this present or any other statute, shall with the utmost expedition make and cause to be made fresh suit and Hue and Cry after the felon or felons by whom such robbery shall be committed; and if any constable, bosholder, headborough, or tythingman, shall offend in the premisses, by refusing or neglecting to make, or cause to be made, such fresh suit and Hue and Cry as aforesaid, every such offender shall for every such refusal or neglect forfeit five pounds. Method of pursuing Hue and Cry.

Sett. 12. " And be it enacted by the authority aforesaid, That every forfeiture hereby incurred shall be recovered with full costs of suit, and shall be and enure, as to one moiety thereof, to the use of the king's most excellent majesty, and as to the other moiety thereof, to the use of such person or persons as shall sue for the same within six months next after such forfeiture shall be incurred, by action of debt, bill, plaint, or information in any of his majesty's courts of record at *Westminster*, wherein no essoin, privilege, protection, or wager of law shall be allowed, nor any more than one imparlance. 5 l. Penalty on refusal or neglect. Penalties how to be levied.

Sett. 13. " And be it further enacted by the authority aforesaid, That if any action, suit, or information shall be commenced or prosecuted against any person or persons for any thing done in pursuance of this or either of the herein before recited statutes, That in every such case the defendant or defendants in such action, suit or information, may plead the general issue, and give this and the aforesaid statutes, or either of them, and the special matter in evidence, at any trial to be had thereupon; and if the

plaintiff or prosecutor shall become nonsuit, or shall discontinue or forbear his or her action or prosecution, or if a verdict shall pass against the plaintiff or prosecutor, or judgment shall be given against him or her, upon demurrer or otherwise, the defendant or defendants may and shall recover full costs, for which he or they shall have the like remedy as defendants have by law in other cases of costs.

Limitation of actions. *Stat. 14.* "Provided always, That no such action, suit, or information, shall be brought or exhibited, but within the space of six months next after the matter or thing done, for which the same shall be commenced or exhibited, as aforesaid.

Stat. 15. "And whereas by the laws now in being, the person or persons robbed may be admitted, in any action to be brought against the hundred, as a witness, to prove the robbery, and the money, goods, or effects, whereof he, she, or they was or were robbed, and yet no person inhabiting within the said hundred can be admitted as a witness for or on behalf of the said hundred, by reason of the interest he or she may have in the consequences of the said action, which is commonly very inconsiderable; be it therefore enacted by the authority aforesaid, That in any action already brought, or to be brought against any hundred, on either of the aforesaid statutes, any person inhabiting within the said hundred or any franchise thereof, shall be admitted as a witness for or on behalf of the said hundred, in the same manner as if he or she were not an inhabitant thereof, but resided in any other hundred whatsoever."

Any inhabitant may give evidence for the hundred.

STAT. 22 Geo. 2, c. 24, [A. D. 1749, intituled] "An act for remedying inconveniencies which may happen by proceedings in actions on the statutes of Hue and Cry."

No person to recover in any action on the statutes of Hue and Cry more than 200 l. unless at the time of the robbery there be two present to attest the truth thereof. "For remedying inconveniencies which may happen by proceedings in actions on the statutes of Hue and Cry, be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That from and after the twenty-fourth day of June, one thousand seven hundred and forty-nine, no person whatsoever shall recover against any inhabitant or inhabitants of any hundred, in any action on any of the statutes of Hue and Cry, more than the value of two hundred pounds, unless the person or persons so robbed shall, at the time of such robbery, for which such action shall be brought, be together in company, and be in number two at the least, to attest the truth of his or their being so robbed; any law, statute, or provision to the contrary in any wise notwithstanding."

By *stat. 22 Geo. 2, c. 33*, Robbery in the navy shall be punished with death, or otherwise, as a court martial, on consideration of circumstances, shall find meet.

Sail-Cloth.

STAT. 4 Geo. 2, c. 27, [A. D. 1731,] *made among other purposes*, “for further encouraging the manufacture of *British* sail cloth.”

SECT. 8. “And be it enacted by the authority aforesaid, That every manufacturer or maker of sail cloth in *Great Britain* shall, after the said twenty-fourth day of *June*, affix at the end of every piece of such sail cloth a stamp containing the name and place of abode of such manufacturer or maker, in plain distinct letters, and words at length; and if any manufacturer or maker of sail cloth shall sell, or expose to sale, any piece or pieces of sail cloth, without being stamped as aforesaid, such manufacturer or maker so offending, and being thereof lawfully convicted, upon the oath of any one or more credible witnesses or witnesses, before any one or more justice or justices of the peace for the county, city, or town, where the offence shall be committed (which oath such justice or justices is and are hereby impowered and required to administer) shall forfeit and pay the sum of five pounds for each and every piece of sail cloth, by him or them sold or exposed to sale, not being stamped, as aforesaid; and if any person or persons whatsoever shall wilfully or maliciously cut off, destroy, or obliterate, any stamp so affixed as aforesaid, or shall affix, or make use of any stamp, on which shall be marked the name and place of abode of any other person or persons, and not his or their real name or names, and place or places of abode, such person or persons, being convicted of any of the offences aforesaid, shall for every such offence forfeit and pay the sum of ten pounds; both which last mentioned forfeitures shall and may be levied and recovered by distress and sale of the offender's goods and chattels, by warrant or warrants under the hands and seals of two or more justices of the peace for the county, riding, city, or place, where the offence shall be committed, and shall go and be applied to the use of the informer or informers.”

Manufacturer to affix his name and place of abode.
Penalty 5 l.
Maliciously cutting off such mark, forfeits 10 l.

STAT. 9 Geo. 2, c. 37. [A. D. 1736] *made, among other purposes*, “for further encouraging and regulating the manufacture of *British* sail cloth.”

SECT. 3. “And for the better ascertaining and distinguishing the sail cloth of the *British* manufacture from such foreign sail cloth as aforesaid, be it enacted by the authority aforesaid, that every manufacturer or maker of sail cloth in *Great Britain* shall, from and after the twenty-ninth day of *September*, one thousand seven hundred and thirty-six, affix or impress, or cause to be affixed or impressed, on every piece of sail cloth by him manufactured or made, a stamp containing the name and place of abode

After 29 Sept. 1736 makers of British sail cloth to stamp their names

Sanctuary.

and places of of such manufacturer or maker in plain distinct letters and words at
 abode on length; and if any manufacturer or maker of sail cloth or other person
 every piece, shall sell or expose to sale, or work up into sails, any piece or bolt of
 on penalty of *British* sail cloth without being stamped as aforesaid, such manufacturer or
 10 l. for each maker, or other person so offending, and being thereof lawfully convicted
 piece. upon the oath of one or more credible witness or witnesses, before any one
 or more justice or justices of the peace for the county, city, or town,
 where the said offence shall be committed (which oath such justice or jus-
 tices is and are hereby impowered and required to administer) shall forfeit
 the sum of ten pounds for each and every piece of sail cloth by him or
 them sold or exposed to sale, or worked up into sails, not being stamped
 as aforesaid; and if any person or persons whatsoever shall wilfully or ma-
 liciously cut off, destroy, or obliterate any stamp so affixed or impressed
 as aforesaid (except in the tarring or working up the same) or shall affix
 or impress any stamp, on which shall be stamped the name or place of
 abode of any other person or persons, and not his or their real name or
 names and place or places of abode; such person or persons being con-
 victed of any of the offences aforesaid, shall for every such offence forfeit
 the sum of five pounds; which said last mentioned forfeit shall be levied
 and recovered by distress and sale of the offender's goods and chattels, by
 warrant or warrants under the hands and seals of two or more justices of
 the peace for the county, riding, city, or place, where the offence shall
 be committed, and shall go and be applied to the use of the informer or
 informers."

51. Penalty
 on wilfully
 obliterating
 the stamp,
 or affixing
 another per-
 son's stamp.
 By 4 Geo. 3,
 c. 11, con-
 tinued to 29
 Sep. 1771,
 &c.

Sanctuary.

STAT. 21 Jac. 1, c. 28, [*A. D. 1623, intituled*] "An act for continu-
 ing and reviving of divers statutes, and repeal of divers others."

All Sanctua- *Sec. 7.* "And be it also enacted by the authority of this present par-
 ries taken liament, that no sanctuary or privilege of sanctuary shall be hereafter ad-
 away. 3 Inst. mitted or allowed in any case. 22 Hen. 8, c. 14.
 115, 217.

Savengers.

Scavengers.

THE two acts of 1 Geo. 1, *st.* 2, *c.* 52, *sect.* 9, and 9 Geo. 2, *c.* 18, *sect.* 3, concerning scavengers, are repealed by stat. 7 Geo. 3, *c.* 42. See title **Highways**, page 552.

Schoolmasters.

WHERE a schoolmaster, in correcting his scholar, happens to occasion his death, if in such correction he is so barbarous as to exceed all bounds of moderation, he is at least guilty of manslaughter; and if he make use of an instrument improper for correction, and apparently endangering the scholar's life, as an iron bar, a sword, or kick him to the ground, and then stamp on his belly, and kill him, he is guilty of murder. 1 *Hawk. P. C.* 73, 74.

By stat. 11 & 12 *Will.* 3, *c.* 4, *sect.* 3, a papist keeping school shall be adjudged to perpetual imprisonment. See **Papery**, page 738.

Seamen.

STAT. 1 Geo. 1, *st.* 2, *c.* 25, [*A. D.* 1714] made, among other purposes, "to prevent disturbances by seamen."

Sect. 1. "Whereas divers fightings, quarrellings, and disturbances, do often happen in and about his majesty's offices, yards, and stores, belonging to his majesty's royal navy, and frequent differences and disorders are occasioned in and about the office of his majesty's treasury of the navy, on pay-days, in *London*, *Portsmouth*, and other places of meeting for the service of the said navy, by the unreasonable turbulency of seamen, and others,

Treasurer,
&c of the
navy impow-
ered to punish
persons who
make distur-
bances in the
yards, &c.

others, attending on or relating to that service, or their creditors, or by the rudeness of the officers intrusted with his majesty's stores on land, or in his royal ships, when they are questioned by the principal officers and commissioners of the said navy, either for neglect or imbezilment of his majesty's provisions, ammunition, or other equipage of the navy under their charge, not only to the disturbance of the peace, but sometimes to the danger and hindrance of his majesty's service, both in point of husbanding his majesty's revenue, and also in the dispatch of the ships, on which the honour and safety of his majesty and kingdom so much depends; which inconveniencies require a speedier remedy than the ordinary course of justice: the parties accused or offending, being many times bound to sea, and the principal officers and commissioners, for want of authority to suppress such insolencies and disorders, and hear, determine, and punish such offences, being necessitated to pass by many offences, in which his majesty might be righted, if their necessary attendance on that important service would permit the prosecution of the offenders before other ordinary judicatures: for remedy whereof, be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in parliament assembled, and by the authority of the same, That the treasurer, controller, surveyor, clerk of the acts and the commissioners of the navy, for the time being, or any one or more of them, shall, from and after the twenty-ninth day of *September* next ensuing, have power and authority, by warrant under any one or more of their hands and seals, to cause such offenders to be apprehended, and brought before him or them, and to examine and punish all such person and persons whom he or they, upon their enquiry and examination of witnesses upon oath, (which oath he or they are hereby impowered to administer) or upon confession of the party or parties accused, or on view in his or their presence, shall find to make, or have made any such disturbance, fighting, or quarrelling in any the yards, stores, offices, or places aforesaid, at pay-days, or on other occasions relating to the naval services, in such manner as followeth (that is to say) that they, or any one or more of them, may punish any the said offences, by fine, imprisonment, or either of them, the fine not exceeding twenty shillings, and imprisonment not exceeding one week; and have power in such cases, to commit such person to the next gaol, or to the custody of the messenger or messengers for the time being, attendant on them, who respectively are to receive and detain such person so offending; and that the said principal officers and commissioners, or any one or more of them, then present, have hereby power and authority to discharge such fine or imprisonment, if they think fit, and for non-payment of the fine so imposed, and not remitted, to imprison the party offending, until payment thereof, or otherwise to cause such offender or offenders to be sent to the next house of correction to the place where such offence shall be committed, there to be kept at hard labour for the space of two months, without bail or mainprize; which said fines shall be paid to the clerk of the chest at *Chatham*, for the use of the maimed seamen.

Sec. 2. “ And it is hereby further enacted by the authority aforesaid, ^{And may bind the offenders to good behaviour, and to appear at the assizes, &c.} That the said officers and commissioners, or any one or more of them (in cases where greater example or punishment is needful) may also bind the person or persons, so offending, to their good behaviour, and to answer the offences, whereof they shall be accused, at the next assizes or general quarter-sessions of the peace for the county or place where such offence shall be committed, with or without securities, as occasion shall be; and in default of such securities, where the same shall be required, to commit the person or persons offending, as aforesaid, to the common gaol of the county or place where such offence shall be committed, in order to their being prosecuted for such offence or offences at the next assizes or general quarter-sessions of the peace for such county or place.”

STAT. 2 *Geo 2, c. 36.* [*A D. 1739, intituled*] “ An act for the better regulation and government of seamen in the merchants service.”

“ Whereas the welfare and riches of this kingdom greatly depend on the trade and navigation thereof, the same being of great use and benefit, and tending very much to enriching the subjects thereof, upon which great numbers of the artificers and manufacturers livelihoods wholly depend; and whereas, for several years last past, the navigation carried on by the merchants to parts beyond the seas, hath been, and doth still remain, under very great difficulties and expences, by the uncertainty they labour under by seamen and mariners, who ship themselves on board merchant ships, and after they have so done, neglect their duty, and will not remain on board their ships or vessels, to discharge their duty; and very often, when ships and vessels come to be cleared out, in order to proceed on their respective voyages, the seamen refuse to proceed with them, without coming to new agreements for increasing their wages, and many of them will leave their ships and vessels, and not proceed on their voyages, which puts the owners of such ships and vessels to great trouble and charges, to get other sailors or mariners in their stead, and often is a means to over-set the voyages of such ships and vessels, to the great prejudice of the owners and freighters of the goods on board the said ships and vessels; and yet such seamen and mariners, after they have committed such offences and disorders, will bring actions against the owners or masters of the said ships and vessels for the recovery of their wages, from the time of their shipping themselves unto the time they quit the said ships and vessels: and whereas many of the said seamen and mariners will neglect their duty when on board at sea, and desert their ships and vessels in foreign parts, which puts the said owners of ships and vessels to very great difficulties and expences, to get others in their stead, to bring their ships and vessels home; and afterwards such seamen and mariners insist on recovering their wages, notwithstanding their voluntary desertion; all which is a great discouragement to trade and navigation; therefore, in order to prevent such practices for the future, may it please your majesty that it may be enacted, and be it enacted by the king's most excellent majesty,

by

No masters of ships to proceed on a voyage without agreeing with the mariners for wages,

apprentices excepted,

on forfeiture of 5 l. for each mariner.

Mariners to sign the agreement.

Penalty on mariners deserting.

by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That from and after the twenty fourth day of *June*, one thousand seven hundred and twenty nine, it shall not be lawful for any master or commander of any ship or vessel bound to parts beyond the seas, to carry any seaman or mariner, except his apprentice or apprentices, to sea, from the port or place where he or they were entred, or shipt, to proceed on any voyage to parts beyond the seas, without first coming to an agreement or contract with such seamen or mariners for their wages, which agreement or agreements shall be made in writing, declaring what wages each seaman or mariner is to have respectively during the whole voyage, or for so long time as he or they shall ship themselves for; and also to express in the said agreement or contract the voyage, for which such seaman or mariner was shipt, to perform the same; and in case any master or commander of any ship or vessel shall carry out any seaman or mariner, except his apprentice or apprentices, upon any voyage to parts beyond the seas, without first entring into such agreement or contract, as aforesaid, and he and they signing the same, such master or commander shall forfeit and pay the sum of five pounds for every such seaman or mariner, which he shall carry to sea, without entring into such agreement in writing, as aforesaid, to the use of *Greenwich* hospital, to be recovered upon information on the oath of one or more witness or witnesses, before any one or more of his majesty's justice or justices of the peace, who are hereby authorized and required to issue out his or their warrant or warrants to bring before him or them such master or commander of any such ship or vessel; and in case he or they refuse to pay such penalty or forfeiture, as aforesaid, to grant his or their warrant or warrants, to levy the same by distress and sale of the offender's goods; and, in case no distress can be found, to commit the offender or offenders to the common gaol of the city, county, town, or place, there to remain until he or they shall pay the same.

Sec. 2. " And be it further enacted, That if any seaman or mariner enter or ship himself on board any merchant ship or vessel, on any intended voyage for parts beyond the seas, he and they so entring themselves, as aforesaid, shall, and they are hereby obliged to sign such agreement or contract within three days after he or they shall have entred themselves on board any ship or vessel, in order to proceed on any voyage, as aforesaid; which agreement or agreements, or contracts, after the signing thereof, shall be conclusive and binding to all parties, for and during the time or times so agreed or contracted for, to all intents and purposes, any custom or usage to the contrary in any wise notwithstanding."

Sec. 3. " And be it enacted and declared by the authority aforesaid, That in case any seaman or mariner shall desert, or refuse to proceed on the voyage on board any ship or vessel, bound to parts beyond the seas, as aforesaid, or that shall desert from the ship or vessel, to which he or they shall belong, in parts beyond the seas, after he or they shall have signed such contract or agreement, he or they shall forfeit to the owners

of such ship or vessel the wages which shall be due to him or them at the time of his or their deserting from such ship or vessel, or obstinately refusing to proceed on such voyage.

Sett. 4. " And be it further enacted, That in case any such seaman or mariner shall desert, or absent himself from any such ship or vessel, after he or they have entred into and signed such contract or agreement to proceed upon any voyage to parts beyond the seas, as aforesaid, upon application made to any of his majesty's justices of the peace, within their respective jurisdictions, by the master or commander, owner or owners, or other person or persons having charge of the said ship or vessel, to which such seaman or mariner did belong, it shall and may be lawful for such justice or justices, and they are hereby required, to issue forth his or their warrant or warrants to apprehend such seaman or mariner; and in case he or they shall refuse to proceed on the voyage, for which he or they entred into contract or agreement to perform, as aforesaid, and shall not give a sufficient reason for such refusal, to the satisfaction of such justice or justices, then to commit such seaman or mariner to the house of correction, there to be kept to hard labour, not exceeding thirty days, nor less than fourteen days, any thing to the contrary notwithstanding. Justices of the peace may commit deserters to the house of correction.

Sett. 5. " And be it enacted by the authority aforesaid, That in case any seaman or mariner shall absent himself from the ship or vessel, to which he shall belong, without leave from the master or commander, or other chief officer, having the charge of such ship or vessel, every such seaman or mariner shall, for every such day's absence, forfeit two days pay to the use of *Greenwich* hospital, to be recovered, applied, and disposed of, as is herein after directed by this act. Penalty on mariners absenting from the ship without leave.

Sett. 6. " And whereas seamen and mariners, after their ship's arrival at their unlivering port in *Great-Britain*, oftentimes leave the ships and vessels before they are unladen, or before the said seamen and mariners are discharged by the masters or commanders of such ships and vessels; in order to prevent such practices for the future: Be it further enacted by the authority aforesaid, That in case any seaman or mariner, not entring into the service of his majesty, his heirs, and successors, shall leave such ship or vessel, to which he or they belong, before he or they shall have a discharge in writing from the master or commander, or other person having the charge of such ship or vessel, he or they so leaving such ship or vessel shall forfeit one month's pay, to be recovered, applied, and disposed of, as is herein after directed. Penalty for leaving the ship before discharged.

Sett. 7. " And be it further enacted by the authority aforesaid, That upon the arrival of any ship or vessel into *Great-Britain*, from parts beyond the seas, the masters or commanders of such ships or vessels shall be, and they are hereby obliged to pay the seamen and mariners belonging to such ships or vessels their wages, if demanded, in thirty days after the said ships or vessels being entred at the Custom-house, except in case where a covenant shall be entred into to the contrary, or at the time the said seamen and mariners shall be discharged, which shall first happen, if demanded, deducting out of such wages the penalties and forfeitures by this act im-

posed, under the penalty of paying to each seaman or mariner that shall be unpaid, contrary to the intent and meaning of this act, twenty shillings over and above the wages that shall be due to each person, to be recovered by the same means and methods, as the wages may be recovered; and such payment of wages aforesaid shall be good and valid in law, notwithstanding any action, bill of sale, attachment, or incumbrance whatsoever.

In case of suit for wages, master obliged to produce the agreement.

Seet. 8. " And be it further enacted, That no seaman or mariner by entering into or signing such contract or agreement, as aforesaid, shall be deprived of or hindered from using any means or methods for the recovery of wages against any ship, the master or owners thereof, which he may now lawfully make use of, and that in all cases where it shall or may be necessary that the contract or agreement in writing aforesaid should be produced in court, no obligation shall lie on any seaman or mariner to produce the same, but on the master, owner, or owners of the ship, for which the wages shall be demanded; and no seaman or mariner shall fail in any suit, action, or process for recovery of wages for want of such agreement or contract being produced, any law, usage, or custom to the contrary notwithstanding.

Masters to deduct out of seamen's wages all penalties due to Greenwich hospital.

Seet. 9. " And be it further enacted, That the masters, or commanders, or owners of any ships or vessels shall and they hereby have full power to deduct, out of the wages of any seaman or mariner, all the penalties and forfeitures to be incurred by this act, and to enter them in a book or books to be kept for that purpose, and to make oath, if required, to the truth thereof; which book or books shall be signed by the said master or commander of each ship or vessel respectively, and two or more principal officers belonging to such ships or vessels, setting forth that the penalties and forfeitures contained in such book or books, are the whole penalties and forfeitures stopt from any seamen or mariners during the whole voyage; which penalties and forfeitures (except the forfeiture of wages to the owners on the desertion of any seaman or mariner, or on refusing to proceed on the voyage) shall go to, and be applied to the use of *Greenwich* hospital, and not otherwise, to be paid and accounted for by the masters and commanders of ships and vessels coming from parts beyond the seas, to the same officer or officers, at any port or place, who collects the six-pence *per* month, deducted out of seamen's wages, for the use of the said hospital; which officer shall have, and hereby hath, full power to administer an oath to every commander or master respectively touching the truth of such penalties and forfeitures, to be paid, applied, and disposed of, as aforesaid.

Forfeitures to be paid to the hospital within three months.

Seet. 10. " And be it further enacted, That in case any masters, or commanders, or owners of any ships or vessels, shall deduct out of the wages of any seamen or mariners, any of the penalties and forfeitures, which by this act are directed to be deducted, and applied to and for the use of *Greenwich* hospital; and shall not pay the money so deducted to some officer or officers, who collect the six-pence *per* month, deducted out of seamen's wages, for the use of the said hospital, in the port or place where such deduction shall be made, within three months after such de-

duction,

duction, every person so neglecting to pay the money deducted, as aforesaid, shall forfeit and pay treble the value thereof to the use of the said hospital; which, together with the money deducted, as aforesaid, shall and may be recovered by the same means and methods, as any penalties and forfeitures for not duly paying the said six pence *per* month can or may be recovered.

Secl. 11. "And be it further enacted, That this act shall be deemed Publick act, and taken to be a publick act; and all judges and justices are hereby obliged to take notice of it as such, without special pleading the same.

Secl. 13. "Provided, That nothing in this act contained shall extend, ^{Ast not to} or be construed to extend, to debar any seaman or mariner belonging to ^{debar seamen} any merchant ship or vessel, from entering, or being entred into, the ser- ^{from entering} vice of his majesty, his heirs, and successors, on board any of his or their ^{into his ma-} ^{jefty's service.} ships or vessels; nor shall such seaman or mariner, for such entry, forfeit the wages due to him, during the term of his service in such merchant ship or vessel; nor shall such entry be deemed a desertion.

By Stat. 17 *Geo.* 2, *c.* 5, *secl.* 3, A seaman having a testimonial under the hand and seal of a justice of the peace shall not be deemed a vagrant. See **Vagrants.**

By Stat. 19 *Geo.* 2, *c.* 21, *secl.* 5, A seaman shall be put in the stocks for one hour, for default of paying the penalty for swearing. See **Swearing.**

STAT. 31 *Geo.* II. *c.* 10. [*A. D.* 1753] *made among other purposes,* "for preventing frauds and abuses attending the payment of seamen's wages.

Secl. 24. And whereas divers wicked practices have been carried on, by personating and falsely assuming the names and characters of officers, seamen, and others, intitled, or supposed to be intitled, to wages, pay, or other allowances of money, or prize money, for serving on board of ships or vessels of the royal navy, and by forging and counterfeiting letters of attorney, bills, tickets, assignments, last wills, and other authorities and powers, from such officers and seamen, and by falsely taking out probate of wills, and letters of administration, to such officers and seamen; be it therefore enacted by the authority aforesaid, That from ^{Penalty of} and after the said first day of *November*, whosoever willingly and know- ^{personating} ingly shall personate, or falsely assume the name or character of, or pro- ^{an officer, or} cure any other to personate, or falsely to assume the name or character ^{seaman, sup-} of, any officer, seaman, or other person, intitled, or ^{posed to have} supposed to be in- ^{wages due to} titled, to any wages, pay or other allowances of money, or prize money, ^{him,} for service done on board of any ship or vessel of his majesty, his heirs, or ^{or his execu-} successors; or the executor or administrator, wife, relation, or creditor, ^{tor, relation,} of any such officer or seaman, or other person, in order to receive any ^{or creditor,} wages, pay, or other allowances of money, or prize-money, due, or sup- ^{or of forging} posed to be due or payable, for or on account of the services of any such ^{letters of at-} officer or seaman, or other person as aforesaid; or shall forge or counter- ^{feit,}

torney, tickets, certificates, or wills; or of making a false oath to obtain probate of any will, in order to receive the wages, &c. of such person, is death.

feit, or procure to be forged or counterfeited, any letter of attorney, bill, ticket, certificate, assignment, last will, or any other power or authority whatsoever, in order to receive any such wages, pay, or other allowances of money, or prize-money, due, or supposed to be due, to any such officer or seaman, or other person, as aforesaid; or shall willingly and knowingly take a false oath, or procuring any other person to take false oath, to obtain the probate of any will or wills, or to obtain letters of administration, in order to receive the payment of any wages, pay, or other allowances of money, or prize-money, due, or that were supposed to be due, to any such officer, seaman, or other person, as aforesaid, who has really served, or was supposed to have served, on board of any ship or vessel of his majesty, his heirs, or successors; every such person so offending, being lawfully convicted of any such offence or offences, shall be deemed guilty of felony, and shall suffer death as a felon, without benefit of clergy.

STAT. 2 Geo. 3, c. 31: [A. D. 1761, intituled] "An act for making perpetual an act for the better regulation and government of seamen in the merchants service; and for extending the provisions thereof to his majesty's colonies in *America*."

Preamble.

Act of 2 Geo. II. which was continued by several subsequent acts, is made perpetual.

"Whereas the law herein after mentioned, which hath, by experience, been found useful and beneficial, is near expiring, may it therefore please your most excellent majesty, that it may be enacted; and be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That an act made in the second year of his late majesty's reign, intituled, *An act for the better regulation and government of seamen in the merchants service*, which was to be in force for five years, from the twenty fourth day of *June*, one thousand seven hundred and twenty nine, and from thence to the end of the then next session of parliament; and which act was, by an act made in the eighth year of the reign of his said late majesty, further continued until the twenty-fifth day of *March*, one thousand seven hundred and forty-nine, and from thence to the end of the then next session of parliament; and which act was, by an act made in the twenty third-year of the reign of his said late majesty, further continued until the twenty-fifth day of *March*, one thousand seven hundred and sixty-four, and from thence to the end of the then next session of parliament, is temporary, and near expiring; shall be, and is hereby, made perpetual.

From and after 1 May, 1764, all the provisions, penalties, matters, and things, in the said act of 2 Geo. II. are extended to

SECT. 2. "And be it further enacted by the authority aforesaid, That from and after the first day of *May*, one thousand seven hundred and sixty-four, all the provisions, penalties, clauses, matters, and things, contained in the said act of the second year of his said late majesty's reign, shall be, and the same are hereby, extended to all his majesty's colonies in *America*; and that all penalties and forfeitures to be incurred by the said act, and directed to be applied to and for the use of *Greenwich* hospital, shall be paid to such officer or officers in the said colonies, as shall on that behalf be

appointed

appointed by the lord high admiral of *Great-Britain*, or the commissioners his majesty's colonies in America, and the forfeitures applicable to Greenwich hospital, and shall not be paid there to the officer constituted by the admiralty; and masters of ships, deducting any of the said forfeitures out of the seamen's wages, and not duly paying over the same, forfeit treble the value to the use of the said hospital.

being; and in case any masters or commanders, or owners, of any ships or vessels shall deduct out of the wages of any seaman or mariner any of the penalties and forfeitures which, by the said act, are directed to be deducted and applied to and for the use of *Greenwich* hospital, and shall not pay the money so deducted to such officer or officers so to be appointed in the port or place in the said colonies where such deduction shall be made, within three months after such deduction, every person so neglecting to pay the money deducted as aforesaid, shall forfeit and pay the treble value thereof to the use of the said hospital; which, together with the money deducted as aforesaid, shall and may be recovered by the same means and methods as any penalties and forfeitures can or may be recovered by the said act.

By STAT. 3 *Geo. 3, c. 8*, Such seamen as have been in service since the 22d of his late majesty are enabled to exercise trades. See this act at large under title **Poor**, page 402.

Servants (to Clothiers.)

STAT. 4 *Ed. 4, c. 1. [A. D. 1464.]* made, among other purposes, to ascertain "the length and breadth of cloths made to be fold."

SECT. 5. "Also whereas before this time in the occupations of cloth-making, the labourers thereof have been driven to take a great part of their wages in pins, girdles, and other unprofitable wares, under such price as they did extend to, and also have delivered to them woolls to be wrought by very excessive weight, whereby both men and women have been discouraged of such labour; (14) therefore it is ordained and established by the authority aforesaid, that every man and woman being cloth-makers, from the said feast of *St. Peter*, shall pay to the carders, spinsters, and all such other labourers in any part of the said trade, lawful money for all their lawful wages, and payment of the same; (15) and also shall deliver woolls to be wrought according to the faithful delivery and due weight thereof, upon pain of forfeiture to the same labourer the treble of his said wages so not paid, as often as the cloth-maker doth refuse to pay the same in the said manner and form to any such labourer, put by him to the occupation in any of the said parts of cloth-making; (16) and also to forfeit to the same labourer, for every delivery of excessive and unlawful weight to him committed to be wrought, 6*d.* for every default.

SECT.

Every worker
of wooll shall
do his duty
therein law-
fully.
The fuller's
duty in his
occupation.

What magi-
strates may
enquire of
and punish
such as do
offend.

What proces-
s shall be
awarded by
justices of
peace against
offenders.

Stat. 6. "Also it is ordained and established by the authority aforesaid, that every carder, spinster, weaver, fuller, sheerman, and dyer, shall duly perform his duty in his occupation, upon pain to yield to the party grieved in this behalf his double damages; (2) and that every fuller, from the said feast of *St. Peter*, in his craft and occupation of fulling, rowing, or tayfeling of cloth, shall exercise and use tayfels, and no cards, deceitfully impairing the same cloth, upon pain to yield to the party grieved his double damage. (3) And that every justice of the peace for the time being, of every county of this realm, throughout the same county, out of cities, boroughs, and towns where any mayor, master, warden, bailiff or bailiffs is or be, and every mayor where there is no master, and every master where there is no mayor, and every bailiff or bailiffs where there is no mayor nor master, and every portreve where no mayor, master, bailiff, nor bailiffs, is or be, of every city, borough, and town within every such county aforesaid, and every constable of hundred, where any constable of hundred is, out of every city, borough, and town, where any mayor, master, bailiff or bailiffs, or portreves, is or be; and that every steward keeping or holding wapentake or leet of any person out of city, borough, or town, where no mayor, master, bailiff or bailiffs, or portreves is or be, shall have power and authority, by this ordinance, to hear and determine the complaints of every such cloth-maker and labourer, as well for nonpayment of the said labourers wages, as of the said forfeiture and damages, by due examination of the parties in this behalf thereupon, for nonpayment of the said duties and forfeiture, and for the said damages to commit the said offenders in this behalf to the next gaol within the same county, there to remain till the said duties, forfeitures, and damages be fully paid to the said labourer or cloth-maker; (4) and also that every the said justices of peace, mayor, master, warden, bailiff or bailiffs, portreve, and steward of wapentake and leet, upon the information or complaint of any other person which is not grieved in this behalf, shall have power by the said authority within his jurisdiction, to cause the party to come before him, against whom such information or complaint shall be made, for offending this ordinance, and to examine him in and upon the matter contained in the same information or complaint; (5) and if the party, by examination, or other due proof, be found guilty or defective, that then the same party, as often and for every time that he is so found guilty or defective, shall forfeit to the king, or to such person or persons which is or be entitled to have fines or amerciaments for offences done within their jurisdiction, *3s. 4d.* (6) And that every of the said justices of peace, and other officers aforesaid, within his jurisdiction, upon every of the said informations or complaints, shall have full power to make like process against the party, upon whom any such information or complaint, as before is rehearsed, shall be made, to cause him personally to appear before him, thereupon to be examined, as justices of peace have upon information or complaint made to them for surety of peace, without any fee or reward to be taken or had by any of the said justices, or any other officer in this party, for the execution of their offices in this behalf.

STAT. 7 Jac. 1, c. 7. [*A. D. 1609, intituled,*] "An act for the punishing and correcting of deceit and frauds committed by sorters, kembers and spinsters of wool, and weavers of wollen yarn."

"Whereas by the trade of clothing, making of bays, says, and other cloths and stuffs made of wool, or partly of wool, many poor people are set on work, and great profit hath grown to the poor and commonwealth thereby; (2) yet now by the abuse and deceit of the sorters, kembers, carders and spinsters of wool to them delivered, by the persons using the trades aforesaid, and weavers of yarn made of such wool, who are set on work by the clothier, maker of bays, says, and other cloths and stuffs aforesaid, by unjustly, deceitfully and falsely purloining, embezilling, selling and detaining of part thereof, to the great damage of the clothier and others using the trades aforesaid, whereby true cloth-making is much hindered, and idleness doth daily increase: (3) So that many exercising the trades before-mentioned, are greatly impoverished, and the parties which commit the offences aforesaid, being poor and altogether unable to make recompence or satisfaction for the trespasses, deceits and abuses aforesaid, have much discouraged the said clothier, maker of bays, and others of the trades aforesaid, to set poor people on work, whereby much poverty doth increase, and more is like daily to increase, to the great damage and hindrance of the commonwealth:

Sec. 2. "For the preventing and reformation whereof, be it enacted by the authority of this present parliament, That all and every such lewd person and persons, who shall at any time after twenty days next after the end of this session of parliament, unjustly, falsely, or deceitfully convey away, imbezil, purloin, sell or detain any part of the wool or yarn delivered by any clothier, maker of bays, says, or by any other person or persons making any such cloths or stuffs, to any such sorter, carder, kember, spinster or weaver of wool or yarn, That in every such case and cases, as well the sorter, carder, kember, spinster and weaver so offending, as the buyer and buyers, receiver and receivers of the same, knowing the same, being thereof lawfully convicted (by confession of the party or parties so offending, or by one sufficient witness upon oath before two or more of the king's majesty's justices of the peace of the same county or liberty where the same offence or offences shall be committed, or if it be within a town corporate, before the mayor, bailiff, or chief officer, and one more of the aldermen, or most substantial persons of the said town; (2) who shall by force of this act have full power and authority to minister the same oath, and finally to hear, end, and determine all and every the offences aforesaid; (3) shall give and make to the party or parties grieved, such recompence and satisfaction for such their damage and loss, as by the said justices, or chief officers shall be ordered and appointed: (4) and if the party or parties so offending shall not be thought, in the discretion of the said justices, or chief officers, able or sufficient, or do not make recompence or satisfaction for the same offence or offences, in such manner and form as by the said justices, or chief officers shall be ordered and appointed,

The penalty of a worker of wool or yarn that doth imbezil or detain any part thereof.

pointed, as aforesaid, then the party or parties offending, for the first offence to be apprehended and whipped, or set in the stocks in the place where the offence is committed, or in some market town in the said county, near to the place where the offence or offences aforesaid shall be committed, as shall be limited and appointed by the said justices of the peace or chief officers: (5) and for the second offence, to incur the like or such further punishment by whipping, or being put in the stocks, as the said justices of the peace, or chief officers, shall in their discretion think fit and convenient.

The punishment of the receiver or buyer of imbezilled yarn.
1 Salk. 181.

Sett. 3. "And be it likewise enacted by the authority aforesaid, That all and every receiver and receivers, buyer and buyers of any wool or yarn, imbezilled or purloined, contrary to the meaning of this act, knowing the same to be imbezilled or purloined, shall be subject to like punishment as by this act is inflicted or provided to be inflicted upon any such person so imbezilling or purloining any such wool or yarn, as aforesaid.

Spinners of wool in certain towns in *Essex*.

Sett. 4. "And be it likewise enacted, That all and every spinner and spinners of wool within the county of *Essex*, that shall receive any wool to be spun into yarn for any clothier, or maker of bays, says or other stuffs aforesaid, dwelling in the town of *Cogshall*, *Bocking*, *Braintree*, *Halstead*, *Wittam*, or *Colchester* within the said county, and shall deliver back again the yarn made of the said wool, by any shorter reel than hath been there usual of antient time, that is to say, the said reel containing two yards about, shall be subject to like punishment as by this act is inflicted, or provided to be inflicted upon any person or persons imbezilling and purloining yarn, as aforesaid.

STAT. 10 *Ann*, c. 16. [*A. D.* 1711.] *Made among other purposes*, "For the better payment of the poor employed in the woollen manufacture of mixt or medley broad cloth."

Clothiers, &c. shall pay their workmen in money.

Sett. 6. "And be it further enacted by the authority aforesaid, That from and after the said twenty-fourth day of *June*, one thousand seven hundred and twelve, every clothier, cloth-worker, card-maker, or any other person concerned in the trade of the woollen manufacture, shall make payment in money to all and every person and persons any ways employed or concerned in the said woollen manufacture, for all work to be done in relation thereunto, and shall not in lieu of payment, impose or deliver to them any sort of goods or wares for such work; and in case any person or persons shall, in lieu of payment, so impose on or deliver to any workmen or poor labourers, any goods or wares, for or instead of money, every person or persons so offending therein, shall for every such offence, forfeit the sum of twenty shillings, to be recovered and distributed in such manner as in and by this act is directed.

Penalty 20s.

Offences against this act to be determined by justices.

Sett. 7. "And be it further enacted by the authority aforesaid, That all offences against this act shall be heard and determined by one or more justice or justices of the peace of the county, city or place where the same shall be committed, provided such justice or justices be not concerned

cerned in the matter of the said complaint, upon the oath of one or more credible witness or witnesses; which oath such justice or justices of the peace is hereby impowered to administer; and that all and every the said Forfeitures, penalties, and forfeitures, which shall happen by virtue of this act, shall one half to the be the one moiety to the informer, and the other moiety to the poor of the parish, township or place where the offence shall be committed; and in case any offender shall neglect or refuse to pay any such penalties and forfeitures by the space of fourteen days after the conviction for such offence, That then (and not before) it shall and may be lawful for the justice or justices of peace before whom such conviction was made, and such justice or justices is and are hereby required to issue out one or more warrant or warrants, under his or their hands and seals, to the constable or constables of the parish, town, or place where such offender doth inhabit, or can be found, within the limits of his or their respective jurisdictions, to levy the same by distress and sale of the offender's goods, returning the overplus (if any be) to the offender; and where no sufficient distress can be found, to commit the offender to the gaol or house of correction for the county or corporation, to be kept to hard labour for such time as the justice or justices of the peace, before whom such conviction shall be made, shall direct, not exceeding, for any one offence, three months.

Sett. 8. " Provided always, That all offences committed against this act shall be prosecuted within thirty days next after the offences are committed or discovered.

Sett. 9. " And be it further enacted, That if any person or persons find him or themselves aggrieved by any order or warrant made by any justice or justices of the peace, upon any conviction before him or them in pursuance of this act, such person or persons may appeal to the justices of the peace at the next general quarter-sessions of the peace to be held for the county or place where such conviction shall be made, giving sufficient notice of such appeal; and if the justices at such next general sessions shall think fit to confirm or disannul the said order or warrant, they shall allow such costs and charges to the party grieved thereby, as they shall think reasonable, to be levied and paid in such manner as is usual in other cases of appeal from the orders of justices of the peace to the general quarter-sessions."

STAT. 1 Geo. 1, st. 2, c. 15. [A. D. 1714] made, among other purposes, " to make the preceding act of 10 Ann. more effectual for the benefit of trade in general."

Sett. 7. " And be it further enacted by the authority aforesaid, That all offences against this act shall be heard and determined by one or more justice or justices of the peace of the county, city, town, or place, where the same shall be discovered, or where such offender doth inhabit, such justice or justices being not concerned in the matter of the said complaint, upon the oath of one or more credible witness or witnesses; which oath such justice or justices of the peace is and are hereby impowered and required

How the forfeitures shall be disposed.

To be levied by distress, in case of refusal to pay.

to administer: and that all and every the said penalties and forfeitures, which shall happen by virtue of this act, shall be distributed and paid, after the charge of such conviction being first deducted, if in *London*, to the use and benefit of *Christ's Hospital*, if in any other place, to the use of the poor of the parish, township, or place, where the offence shall be discovered; and in case any offender shall neglect or refuse to pay any such penalties and forfeitures, being lawfully demanded, by the space of thirty days next after the conviction for such offence, as aforesaid, or in case the owner, master, occupier, or millman, shall refuse or neglect to repay the forfeiture for want of sufficient length or breadth of admeasurement, as aforesaid, that then (and not before) it shall and may be lawful for the justice or justices of the peace, before whom such conviction was made, or where such owner, master, occupier, or millman doth inhabit, and such justice or justices is and are hereby required to issue out one or more warrant or warrants, under his or their hands and seals, to the constable or constables of the parish, town, or place, where such offender shall inhabit, or can be found, to levy the same by distress and sale of the offender's goods, returning the overplus (if any be) to the owner; and where no sufficient distress can be found, to commit the offender to the common gaol, or house of correction for the county or place where such offender shall be found, there to be kept to hard labour for and during the space of three calendar months.

Prosecution in 40 days.

Persons aggrieved by the justices order may appeal to the sessions, whose determination shall be final; and they shall allow costs to the party aggrieved.

Clothiers, &c. to pay their workmen in money, on forfeiture of 40s.

Seet. 8. " Provided always, That all offences committed against this act, saving in the case of the owner, master, occupier, or millman, upon refusal or neglect of repayment of the forfeitures for want of sufficient length or breadth in admeasurement, as aforesaid, shall be prosecuted within forty days after the offences are committed or discovered.

Seet. 10. " Provided always, That if any person or persons find him or themselves aggrieved by any order or warrant made by any justice or justices, upon any such conviction before him or them, as aforesaid, such person or persons may appeal to the next general quarter-sessions of the peace to be held for the county, riding, or corporation, where such conviction shall be made, giving sufficient notice of such appeal; and the determination of such justices in such sessions shall be final, and the said justices shall allow such costs and charges to the party aggrieved, as they shall think reasonable, to be levied and paid in such manner as is usual in other cases of appeals from the orders of any justice or justices of the peace to the quarter-sessions.

Seet. 12. " And be it further enacted by the authority aforesaid, That from and after the twenty-ninth day of *September*, one thousand seven hundred and fifteen, every clothier, cloth-worker, cord-maker, or any other person concerned in the trade of the woollen manufacture, shall make payment in money to all and every person and persons any ways employed or concerned in the said woollen manufacture, for all work to be done in relation thereunto, and shall not in lieu of payment in money, impose upon, or deliver to them, any, or either of them, any sort of goods or wares whatsoever for such work; and in case any person or persons shall, in lieu

lieu of payment in money, so impose upon, or deliver unto any workmen, or poor labourers, any goods or wares whatsoever for, in lieu of, or instead of money, every person or persons so offending, shall, for every such offence forfeit the sum of forty shillings, to be recovered and distributed in such manner as in and by this act is directed."

STAT. 12 Geo. 1, c. 34. [A. D. 1725] made, among other purposes, "to prevent unlawful combinations of workmen employed in the woollen manufactures."

SECT. 7. "And be it further enacted by the authority aforesaid, That if any person or persons shall, by day or by night, break into any house or shop, or enter by force into any house or shop, with intent to cut or destroy any serge or other woollen goods in the loom, or any tools employed in the making thereof, or shall wilfully and maliciously cut or destroy any such serges or woollen goods in the loom, or on the rack, or shall burn, cut, or destroy any rack on which any such serges or other woollen goods are hanged in order to dry, or shall wilfully and maliciously break or destroy any tools used in the making any such serges or other woollen goods, not having the consent of the owner so to do, every such offender, being thereof lawfully convicted, shall be adjudged guilty of felony, and shall suffer death as in case of felony, without benefit of clergy."

Breaking into a shop to cut any serges, &c. felony.

STAT. 13 Geo. 1, c. 23, [A. D. 1726] made, among other purposes, "for the better regulation of the woollen manufacture, and for preventing disputes among the persons concerned therein."

SECT. 1. "Whereas divers controversies and disputes have arisen between the clothiers and makers of woollen goods, and the manufacturers employed by them, concerning the length of the warping bars, and the uncertainty of weights, by which wool, yarn, and other materials used in the manufacturing or making up of woollen goods, have been delivered out to the several workmen employed therein: now for the better regulating of the said manufacture, and the quieting or more speedy determining all disputes, which may happen for the future, be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That from and after the first day of June, one thousand seven hundred and twenty-seven, It shall not be lawful for any maker of mixed, medley, or white cloth, to use or cause to be used, any bars, called warping bars, but only such which shall be of the measure and length hereafter appointed; that is to say, every long warping bar shall be in length three yards and three inches, and no more; and every round warping bar shall be four yards and four inches round, and no more; the said three inches on the long bar, and the said four inches on the round bar, being in lieu of the over measure usually allowed in cloths; and also that the thrums at the ends of the

The length of warping bars and thrums to be used in mixed medley or white cloth.

Servants (to Clothiers.)

warping bars shall not exceed eighteen inches in length; and if any maker of such cloth shall after the said first day of *June* use, or cause to be used, any warping bar of other length or measure than what is hereby appointed, or with thrums exceeding eighteen inches in length, every such maker of such cloth shall for every such offence forfeit and pay the sum of ten pounds.

All wool, &c.
to be given
out by weight,
at 16 oz. to
the lb.

Secl. 2. "And be it further enacted by the authority aforesaid, That every maker of such cloth or goods mixed with wool, shall give out all wool, yarn, or other materials for such manufacture by weight, after the rate of sixteen ounces to the pound, and shall receive back the same by the same weight, without fraud or deceit, upon pain of forfeiting and paying the sum of five pounds for every offence contrary to the true meaning of this act.

Prosecutions
how to be
heard.

Secl. 4. "And be it enacted, That all prosecutions for offences, contrary to the true meaning of this act, shall be heard and determined by two or more justices of the peace for the county, division, or place, where such offence shall be committed, upon information given upon oath, within three kalendar months after such offence committed; and such justices are hereby authorized and required to examine, hear, and determine the same; and upon every conviction for such offence to issue their warrant or warrants to levy such pains or penalties by distress and sale of the offender's goods and chattels; one moiety thereof to the use of the informer or informers, and the other moiety to the use of the poor of the parish where such offence or offences shall be committed; and for want of a sufficient distress to commit the offender or offenders to the county gaol, for any time not exceeding the space of three months, or until satisfaction be made by such offender or offenders.

How disputes
relating to
wages or da-
mages shall be
heard.

Secl. 5. "And be it enacted, That all disputes and demands, relating to work, wages, or damages, between any clothier or maker of woollen goods, or goods mixt with wool, and any weaver or other person or persons employed in such manufactures, shall be heard and determined by two or more justices of the peace for the county, division, or place, where such dispute or demand shall arise, who are hereby required and authorized, upon complaint to them made, to summon the parties, and to hear and examine upon oath, and adjudge such satisfaction, and to give such costs and damages to the party aggrieved, as in their discretion shall seem reasonable, and to issue their warrant or warrants to levy such costs and damages by distress and sale of the goods and chattels of such person or persons, who shall refuse, for the space of ten days, to pay such costs and damages by them so adjudged; and for want of a sufficient distress, to commit the party to the county gaol or house of correction, for any time not exceeding the space of three months, or until satisfaction shall be made by the party so offending.

Appeal to the
quarter ses-
sions, &c.

Secl. 6. "Provided always, That it shall and may be lawful for any person aggrieved by any order of such justices, to appeal to the justices of peace at the next general quarter-sessions, to be holden for the county, division, or place, where such order shall be made, giving six days notice in writing of such appeal; and the justices in their quarter-sessions are hereby autho-

rized

rized and required to hear and determine the matter of such appeal, and make such order, and to award such costs and damages, as to them in their discretion shall seem reasonable, and to levy, by their order or warrants, such costs and damages so awarded, by distress and sale of the goods and chattels of any person or persons, who shall refuse to obey the same; and for want of sufficient distress to commit the party to the county gaol or house of correction, for any time not exceeding three calendar months, or until satisfaction shall be made by the parties offending; and such award or order of the justices at the quarter sessions shall be final, nor shall the proceedings of any justice or justices, out of sessions, or of the justices in their sessions, in pursuance of this act, be liable to be removed by *certiorari*, or other form or process of law, any thing in this present, or any other act or acts contained to the contrary notwithstanding.

SECT. 7. And to prevent the ill practices aforesaid, and to detect the same, in case they shall be committed, be it enacted by the authority aforesaid, That it shall and may be lawful to and for any one or more justice or justices of the peace, upon information to him or them given on oath, that any person or persons are (or are suspected to be) guilty of any of the ill practices aforesaid, to issue out his or their warrant or warrants to any constable, tithing-man, or other peace officer or officers, or to any churchwarden or overseer, directing him or them in the day-time to enter into any house or houses, shop or shops, warehouse or warehouses, or other suspected place or places, to search for, and examine all such bars and weights as shall be made use of for the purposes before mentioned, by any such clothier or maker of woollen goods, as aforesaid; and if any clothier or maker of woollen cloth shall interrupt any such officer or officers, in the execution of his or their office or offices, that then such clothier or maker shall, for every such offence, forfeit and pay the sum of five pounds.”

SECT. 9. “And be it further enacted by the authority aforesaid, That from and after the said first day of *June*, one thousand seven hundred and twenty-seven, every maker of mixed, medley, or white broad cloth, shall satisfy and pay to the weaver or weavers employed by such maker in or about the weaving the same, according to the number of yards, that the said chains are laid on the warping bars, and not otherwise, on pain of forfeiting and paying for every offence contrary to the true meaning hereof, the sum of five pounds.”

STAT. 29 *Geo. 2, c. 33*, [*A. D. 1756.*] *Made among other purposes,*
“For the better payment of wages of workmen employed in the woollen manufactures.”

SECT. 3. “And be it further enacted, That if any clothier, serge-maker, woollen or worsted stuff-maker, worsted or woollen yarn stocking-maker, or person concerned in making any woollen cloths, serges, stuffs, worsted or woollen yarn stockings, or any other person any ways concerned for himself or another in employing weavers, combers of Jersey or wool, himself or another in employing weavers, combers of Jersey or wool, worsted

Servants (to Clothiers.)

worsted combers, spinners, knitters, or other labourers in the woollen manufactures, shall pay or cause to be paid to any person or persons employed by him or them, his or their wages, or other price agreed on, or any part thereof, either in goods or by way of truck, bill or note, or in any other manner than in money, every person so offending shall forfeit and pay the sum of twenty pounds.

Penalties and forfeitures, how to be recovered and applied.

Secl. 4. " And be it further enacted, That the respective penalties and forfeitures incurred and made payable by this act, may be recovered by action of debt by any person who shall sue for the same, or may be levied upon conviction before any two or more justices of the peace for the county or place where the offence is committed, either by the confession of the party or parties, or upon the oath of one or more witness or witnesses, in case the same be not paid within fourteen days after such conviction, by distress and sale of the goods of the offender or offenders, by warrant under the hands and seals of such justices (which warrant or warrants such justices are hereby authorized to grant, and to administer such oath or oaths) returning the overplus, if any be, after all charges paid; and for want of sufficient distress, the said justices shall commit the offender or offenders to the house of correction for any time not exceeding three months, or until satisfaction shall be made by the parties offending.

For want of distress of offender to be committed.

Application of penalties upon conviction before the justices.

Secl. 5. " Provided always, That if any of the penalties and forfeitures aforesaid be levied upon conviction before the justices of the peace, one moiety thereof shall be paid to the poor of the parish where the offence was committed, and the other moiety to the informer.

None may be sued both ways for the same offence.

Secl. 6. " Provided also, That in case any action of debt shall be brought against any person for any of the penalties and forfeitures aforesaid, such person shall not be liable to any conviction before the justices of the peace for the same offence, whereby such penalties and forfeitures shall be incurred and made payable; nor in case of information laid before the justices, and conviction thereon, shall the person offending be liable to an action of debt for the penalties and forfeitures incurred and made payable by the same offence, for which such person hath been convicted before the justices.

Persons aggrieved by order of justices may appeal to next quarter-sessions, entering into recognizance, and giving eight days notice.

Secl. 7. " Provided always, and be it further enacted, That it shall be lawful for any person or persons, who shall think him, her or themselves aggrieved by any order of such justices, to appeal to the next general or quarter sessions to be holden for the county, division or riding, where such order shall be made; such person or persons so appealing, having first entered into a recognizance with sufficient security before such justices, to prosecute and abide by the order or orders that shall be made on such appeal, and giving eight days notice in writing of such appeal to the party or parties in whose favour such order hath been made; and the justices in their general or quarter sessions are hereby authorized and required to hear and determine the matter of such appeal, and to make such order, and to award such costs and damages, as to them in their discretion shall seem reasonable, and to levy by their order or warrants such costs and damages so awarded, by distress and sale of the goods and chattels

Order of justices to be binding.

of

of any person or persons who shall refuse to pay the same; and for want of sufficient distress, to commit the party or parties to the common gaol of the said county, division or riding for any time not exceeding three months, or until satisfaction shall be made by the party or parties offending; and such award or order of the said justices at their general or quarter sessions shall be final; and no proceedings of any such justice or justices out of sessions, or of the justices in their said general or quarter sessions, in pursuance of this act, shall be liable to be removed by *certiorari*, or other form or process of law; any thing in this act or in any other act, or acts contained to the contrary notwithstanding.

Proceedings
not to be re-
moved by cer-
tiorari.

Sec. 8. " Provided always, That all prosecutions for offences against this act shall be commenced within three months next after the offence committed, and not afterwards."

STAT. 30 Geo. 2, c. 12. [A. D. 1757.] *Made to amend the preceding act of 29 Geo. 2, c. 33.*

Sec. 4. " And be it further enacted by the authority aforesaid, That if any clothier or maker of any mixed, medley or white broad cloth, shall refuse or neglect to pay to the weaver or weavers employed by him or them, his or their wages or price agreed on in money, within two days next after the work shall be performed and delivered to such employer, or some person on his behalf (the same being demanded of such employer or person employed on his behalf); then and in every such case, every such clothier or person so offending, shall for every such offence forfeit and pay the sum of forty shillings; to be recovered in such manner and form, and by such ways and means, and to be paid, applied, and disposed of, as the several penalties and forfeitures incurred and made payable by the said recited act made in the twenty-ninth year of his present majesty's reign, are thereby directed and appointed to be recovered and applied."

paying wages
within 2 days
after delivery
of the work,

to forfeit 40s.

Servants (to Hatters.)

STAT. 22 Geo. 2, c. 27, [A. D. 1749, intituled,] " An act for the more effectual preventing of frauds and abuses committed by persons employed in the manufacture of hats, and in the woollen, linen, fustian, cotton, iron, leather, furr, hemp, flax, mohair, and silk manufactures; and for preventing unlawful combinations of journeymen dyers and journeymen hot-pressers, and of all persons employed in the said several manufactures; and for the better payment of their wages."

13 Geo. 2,
c. 8. 1 Ann.,
stat. 2, c. 18c.

" Where-

Servants (to Hatters.)

“Whereas by an act made in the thirteenth year of his present majesty’s reign, intituled, *An act to explain and amend an act made in the first year of the reign of her late majesty queen Anne*, intituled, *An act for the more effectual preventing the abuses and frauds of persons employed in the working up the woollen, linnen, fustian, cotton, and iron manufactures of this kingdom, and for extending the said act to the manufactures of leather*, it is amongst other things enacted, That if any person or persons hired or employed in the working up of any woollen, linnen, fustian, cotton, or iron manufactures, shall purloin, imbezil, secrete, sell, pawn, exchange, or otherwise illegally dispose of, any the materials with which he, she, or they shall be respectively entrusted to work up such woollen, linen, fustian, cotton, or iron manufactures, whether the same be or be not first made up or manufactured, or shall reel false or short yarn, the person or persons so offending, and being thereof convicted in manner prescribed by the said act of the first year of her said late majesty’s reign, shall forfeit double the value of the damages which the owner or owners of such materials shall respectively sustain thereby, together with full costs of prosecution for every such offence: and in case immediate payment of the respective forfeitures, together with such costs of prosecution as aforesaid, shall be neglected or refused to be made, that then it shall and may be lawful to and for the same justice of the peace, before whom such conviction shall be made, to cause the offender or offenders to be committed to the house of correction, to be there whipped and kept to hard labour for any time not exceeding fourteen days: and in case of a further conviction for a second or other subsequent offence for imbezilling or purloining any of the materials in the said act of the first year of her said late majesty’s reign mentioned, that the person or persons so offending shall, for every second or other subsequent offence, forfeit four times the value of the damages which the owner or owners of such materials (whether the same be or be not made up or manufactured) shall sustain thereby, together with such costs of prosecution, as shall be adjudged reasonable by the justice before whom such offender or offenders shall be respectively convicted: and in case immediate payment of the respective forfeitures, together with such costs of prosecution as aforesaid, shall be neglected or refused to be made, that then such justice, or any other justice of the peace for the county, riding, division, city, town, or place, where such offences shall be committed, shall cause the said offenders to be committed to the house of correction, to be there kept to hard labour for any time not exceeding three months, nor less than one month, as to such justice shall seem reasonable, and also during the time of such commitment shall cause the said offender or offenders to be publicly whipped in the market town where such offender or offenders shall be respectively committed, at the market place or cross of such town, once or oftener, as to such justice shall seem reasonable: and it is by the said act of the thirteenth year of his present majesty’s reign also further enacted, That every person or persons who shall buy or receive, accept or take, by way of gift, pawn, pledge, or sale of or from any of the persons in the said act of the first year

year of her said late majesty's reign mentioned, any woollen, linen, fustian, cotton, or iron manufactures, either before or after the same shall be manufactured or converted into merchantable wares, knowing the same to be so purloined or imbezilled, and being thereof lawfully convicted, shall severally suffer the like forfeitures and penalties as are by the said acts respectively inflicted on persons purloining or imbezilling such of the materials or manufactures enumerated in the said acts respectively; all which forfeitures, when recovered, are by the said act of the thirteenth year of his present majesty's reign directed to be applied in manner following; that is to say, one moiety thereof to the use of the party or parties injured, and the other moiety to the use of the poor of the parish only where the offence shall be committed, with the like liberty and benefit of appealing to all parties, as is given in and by the said act of the first year of her said late majesty: And it is by the said act of the thirteenth year of his present majesty's reign also further enacted, That if any person or persons hired or employed in cutting, paring, washing, dressing, sewing, making up, or otherwise manufacturing of gloves, breeches, leather, skins, boots, shoes, slippers, wares, or other goods or merchandizes, to be made use of in any of the trades or employments, or in manner last mentioned, or in any branch or particular thereof, shall fraudulently purloin, imbezil, secrete, sell, pawn, or exchange all or any part of the gloves, breeches, leather, skins, parings or shreds of gloves or leather, or other materials with which he, she, or they shall be entrusted to work up or manufacture, or shall purloin, imbezil, secrete, sell, pawn, or exchange any gloves, breeches, boots, shoes, slippers, or wares, when made, wrought up, or manufactured, or do or wilfully permit any other act, to lessen the value of such, or any part of such gloves, breeches, leather, skins, parings or shreds of gloves or leather, boots, shoes, slippers, or other wares last particularized, either before or after the same shall be respectively so made into wares, and he thereof lawfully convicted in manner prescribed by the said last mentioned act, before one or more justice or justices of the peace for the county, riding, division, city, town, or place where such offence shall be committed, or where the party or parties so charged shall reside or inhabit, such justice or justices shall and may award the person or persons so offending, to make a reasonable and suitable recompence and satisfaction for every offence to the parties respectively injured, for the damage by them sustained, so as the same do not exceed double the value of the gloves, breeches, leather, boots, shoes, slippers, wares, goods, or materials, by such offender or offenders so purloined, or imbezilled, secreted, sold, pawned, or exchanged; one half thereof to go to the party or parties grieved, and the other half to the use of the poor of the parish or place where such offence shall be committed; together with the full charges attending such conviction; to be levied by warrant under the hand and seal, or hands and seals of such justice or justices by distress and sale of the offender's goods; but if such offender or offenders shall not have goods sufficient to answer the forfeitures and the expences attending

the premisses, and shall also neglect or refuse immediately to pay the same, that then the said offender or offenders, shall, by like warrant of such justice or justices last described, be for every distinct offence committed to the house of correction, or other publick prison of such county, riding, city, town, or place, and there kept to hard labour for the space of fourteen days, and shall be there likewise whipped in such manner, as the said justice or justices shall order and direct; and in case also of a subsequent conviction for a second or any other such like offence, that the person or persons so offending, for every second or other subsequent offence, shall forfeit four times the value of the damages which the owner or owners of such materials, either before or after the same shall be respectively made up into wares, shall sustain thereby, together with such costs of prosecution, as shall be adjudged reasonable by the justice, before whom such offender or offenders shall be respectively convicted; and in case immediate payment of the respective forfeitures, together with such costs of prosecution as aforesaid, shall be neglected or refused to be made, that then it shall and may be lawful to and for such justice to commit the offender or offenders last described to the house of correction, or other public prison, to be there kept to hard labour, for any time not exceeding three months, nor less than one month, as to such justice shall seem reasonable; and also, during the time of such commitment, shall cause the said offender or offenders to be publicly whipped in the market town where such offender or offenders shall be respectively committed, at the market-place or cross of such town, once or oftener, as to such justice shall seem reasonable: and it is by the said act of the thirteenth year of his present majesty's reign also further enacted, That every person and persons who shall knowingly or willingly buy or receive, accept, or take, by way of pawn, pledge, sale, or in any other manner, of or from any of the persons offending in either of the particulars last-mentioned, or of or from any other person or persons whatsoever (except of or from the person or persons in whom the property of such gloves, breeches, leather, boots, shoes, slippers, wares, goods, or other materials, shall be at the time of such sale, pawn, or exchange) or offer so to do, such person or persons offending therein respectively, shall, for every offence, being convicted thereof in manner before prescribed by the said last-mentioned act, make such suitable and reasonable recompence and satisfaction, within two days next after the matter of fact shall be determined by any one or more justice or justices as aforesaid, upon hearing the same, or else be subject to such distress; and for want of sufficient distress be liable to the like punishment as is by the said act directed to be inflicted on such person or persons as shall purloin, imbezel, secrete, sell, pawn, or exchange any gloves, breeches, leather, boots, shoes, slippers, wares, goods, or other materials or effects of that sort as aforesaid, and so in like manner for any second and every other subsequent offence: and whereas the penalties and forfeitures to which offenders against the said acts are subjected, have not been sufficient to deter persons from committing the offences thereby intended to be prevented: and whereas many persons employed in the making of felts or hats, and in preparing or

working up the manufactures of fur, hemp, flax, mohair, and silk, and also the manufactures made of wool, fur, hemp, flax, mohair, cotton or silk, or some of them mixed one with another, have of late been guilty of divers frauds and abuses, by purloining, imbezilling, secreting, selling, pawning, exchanging, or otherwise unlawfully disposing of the materials with which they have been entrusted; and it is therefore become necessary to make provision for preventing such offences for the future: therefore for amending and rendering more effectual the said act made in the thirteenth year of his present majesty's reign, and for extending the provisions and regulations therein and herein made, to the several manufactures herein before mentioned, be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that if any person or persons whatsoever, who shall be hired or employed to make any felt or hat, or to prepare or work up any woollen, linen, fustian, cotton, iron, leather, furr, hemp, flax, mohair, or silk manufactures, or any manufactures made of wool, fur, hemp, flax, cotton, mohair, or silk, or of any of the said materials mixed one with another, shall, from and after the twenty-fourth day of June, one thousand seven hundred and forty-nine, purloin, imbezil, secrete, sell, pawn, exchange, or otherwise unlawfully dispose of any of the materials, with which he, she, or they shall be respectively entrusted, whether the same, or any part thereof, be or be not first wrought, made up, manufactured, or converted into merchantable wares, or shall reel false or short yarn, and shall be thereof lawfully convicted, by the oath or (if the owner thereof be of the people called Quakers) solemn affirmation of the owner of such goods or materials, or by the oath or affirmation of any other credible witness or witnesses, or by the confession of the person or persons charged with such offence, before any one or more justice or justices of the peace of the county, riding, division, city, liberty, town, or place, where such offence shall be committed, or where the person or persons so charged shall reside or inhabit (which oath or affirmation the said justice or justices is and are hereby impowered and required to administer) it shall and may be lawful to and for the said justice or justices, by warrant under his or their hand and seal, or hands and seals, to commit the person or persons so convicted to the house of correction, or other public prison of such county, riding, division, city, liberty, town, or place, there to be kept to hard labour for the space of fourteen days, and also to order the person or persons so convicted, to be once publicly whipped at the market-place, or some other public place of the city, town, or place, where such offender or offenders shall be respectively committed; and in case of a further conviction, in manner before prescribed by this act, for or upon a second or other subsequent offence of the same kind, it shall and may be lawful to and for the justice or justices, before whom such conviction shall be had, to commit the person or persons so again offending, to the house of correction, or other public prison as aforesaid, there to be kept to hard labour for any time not exceeding three months, nor less than one month, and also to order the person or persons so again offending, to be publicly

whipped at the market-place, or some other publick place of the city, town, or place where such offender or offenders shall be respectively committed, twice or oftner, as to such justice or justices shall appear reasonable; any thing in the said act of the first year of her said late majesty's reign, or in the said in part recited act of the thirteenth year of his present majesty's reign, to the contrary in any wise notwithstanding.

Persons convicted of buying or receiving materials from working men,

to forfeit for the first offence 20l. and on non-payment to be committed,

and whipped;

and in case of subsequent offence,

to forfeit 40l. &c.

Sett. 2. " And be it further enacted by the authority aforesaid, That if any person or persons shall buy, receive, accept, or take, by way of gift, pawn, pledge, sale, or exchange, or in any other manner whatsoever, of or from any person or persons, hired or employed to make any felt or hat, or to prepare or work up the woollen, linen, fustian, cotton, iron, leather, fur, hemp, flax, mohair, or silk manufactures, or any manufactures made up of wool, fur, hemp, flax, cotton, mohair, or silk, or of any of the said materials mixed one with another, any thrums or ends of yarn, or any other materials of wool, fur, hemp, flax, cotton, or iron, or any leather, mohair, or silk, whether the same, or any part thereof, be or be not first wrought, made up, or manufactured, knowing the person or persons of whom he, she, or they, so buy, receive, accept, or take the said materials, to be so hired or employed as aforesaid, and not having first obtained the consent of the person or persons so hiring or employing him, her, or them, who shall offer to sell, pawn, pledge, exchange, or otherwise dispose of the said materials, or shall buy, receive, accept, or take, in any manner whatsoever, of or from any other person or persons whomsoever any of the said materials, whether the same be or be not first wrought, made up, or manufactured, knowing the same to be so purloined or imbezilled, then, and in every such case, the person or persons so buying, receiving, accepting, or taking any such materials, being thereof lawfully convicted, in manner before prescribed by this act, for the conviction of persons purloining or imbezilling the said materials, shall, for the first offence, forfeit the sum of twenty pounds; and in case the said forfeiture shall not be immediately paid, the justice or justices before whom such conviction shall be had, shall commit the party or parties so convicted to the house of correction, or other public prison as aforesaid, there to be kept to hard labour, for the space of fourteen days, unless the said forfeiture shall be sooner paid; and if within two days before the expiration of the said fourteen days, the said forfeiture shall not be paid, the said justice or justices is and are hereby impowered and required, to order the person or persons so convicted, to be publicly whipped at the market place, or some other public place of the city, town, or place where such offender or offenders shall be respectively committed, once or oftner, as to such justice or justices shall appear reasonable; and in case of a further conviction, for or upon a second or any other subsequent offence of the same kind, the person or persons so again offending, being thereof convicted in manner before prescribed by this act, shall, for every second or other subsequent offence, forfeit the sum of forty pounds; and in case the said forfeiture shall not be immediately paid, the justice or justices, before whom such conviction shall be had, shall commit the party or parties so convicted to the house of correction, or other public prison as aforesaid, there to be kept to hard la-

bour for any time not exceeding three months, nor less than one month, unless the said forfeiture shall be sooner paid; and if within seven days before the expiration of the time for which such offender or offenders shall be so committed, the said forfeiture shall not be paid, the said justice or justices is and are hereby impowered and required to order such offender or offenders to be publickly whipped at the market-place, or some other publick place of the city, town, or place, where he, she, or they shall be respectively committed, twice or oftener, as to such justice or justices shall appear reasonable; and the said respective forfeitures of twenty pounds and forty pounds, when recovered, after satisfaction shall have been made thereout to the party or parties injured, together with such costs of prosecution as shall be judged reasonable by the justice or justices before whom such conviction shall have been had, shall be equally distributed amongst the poor of the parish or place where the person or persons so convicted shall reside or inhabit; any thing in the said two first-mentioned acts, or either of them, to the contrary in any wise notwithstanding.

SECT. 3. " Provided always, and it is hereby enacted, That if any person convicted as aforesaid, of buying, receiving, or taking to pawn, any of the materials herein before mentioned, shall think himself or herself aggrieved by the judgment of the justice or justices, before whom he, she, or they shall have been convicted, such person shall have liberty to appeal to the justices, at the next general or quarter-sessions of the peace, which shall be held for the county, riding, division, city, liberty, town, or place where such judgment shall have been given; and that the execution of the said judgment shall in such case be suspended, the person so convicted entering into a recognizance at the time of such conviction, with two sufficient sureties, in double the sum which such person shall have been adjudged to forfeit, upon condition to prosecute such appeal with effect, and to be forth coming to abide the judgment and determination of the justices in the said general or quarter-sessions; which recognizance the said justice or justices, before whom such conviction shall be had, is and are hereby impowered and required to take; and the justices, in the said general or quarter-sessions, are hereby authorized and required to hear and finally determine the matter of the said appeal, and to award such costs as to them shall appear just and reasonable to be paid by either party; and if upon the hearing of the said appeal, the judgment of the justice or justices, before whom the appellant shall have been convicted, shall be affirmed, such appellant shall immediately pay the sum which he or she shall have been adjudged to forfeit, together with such costs as the justices, in the said general or quarter-sessions shall award, to be paid by him or them for defraying the expences sustained by the defendant or defendants in such appeal; or in default of making such payments, shall suffer the respective pains and penalties by this act inflicted upon persons who shall neglect to pay, or shall not pay the respective forfeitures by this act imposed upon such as shall be convicted of buying, receiving, or taking to pawn any of the materials herein before mentioned, which shall have been purloined or embezzled.

Appeal given
to persons
convicted of
buying
materials.

The appellant
giving secu-
rity, &c.

Justices im-
powered to
grant a war-
rant to search
the houses,
&c. of per-
sons convicted
of purloining,
&c.

Señ. 4. “ And be it further enacted by the authority aforesaid, That if any person or persons shall be charged with, and afterwards convicted of purloining or embezilling any of the aforesaid materials, or of buying or receiving the same in manner before described, it shall and may be lawful to and for the justice or justices of the peace, before whom such conviction shall be had, to issue a warrant under his or their hand and seal, or hands and seals, directed to any person or persons, empowering him or them, in the presence of a constable or headborough, and in the day time, to enter into and search the houses, out-houses, shops, cellars, vaults, and other places belonging to the person or persons so convicted as aforesaid; and if upon any such search or searches, there shall be found any thrums or ends of yarn, or any other materials of wool, fur, hemp, flax, cotton, iron, leather, mohair, or silk, it shall and may be lawful to and for the person or persons empowered to make such search or searches as aforesaid, to bring such materials before the said justice or justices, to be by him or them detained and kept in safe custody; and if within the space of twenty-four days next after such thrums, or ends of yarn, or other materials shall be so taken and detained, it shall be made appear to the satisfaction of the said justice or justices, that the person or persons from whose houses, out-houses, shops, cellars, vaults, or other places as aforesaid, the said materials shall be so taken and detained, is or are the lawful owner or owners thereof, and came to the possession of the same in an honest and lawful manner, then all such thrums or ends of yarn, or other materials, so taken and kept as aforesaid, shall be restored to the person or persons out of whose custody or possession the same shall have been so taken; but in case it shall not be made appear within the time before limited, to the satisfaction of the said justice or justices, that the person or persons convicted as aforesaid, is or are the lawful owner or owners of the said materials so taken and detained as aforesaid, then, and in every such case, the said materials shall be deemed and adjudged to be purloined and embezilled; and it shall and may be lawful to and for the said justice or justices to direct all such thrums or ends of yarn, or other materials, to be publicly sold, and the money arising by such sale (the charges of such sale being first deducted) to be equally distributed amongst the poor of the parish or place where the person or persons so convicted shall reside or inhabit.

Justice to give
notice to the
convict, of
the materials
brought to
him, in order
to prove his
property, &c.

Señ. 5. “ Provided always, and it is hereby enacted, That the said justice or justices shall, within three days after such materials shall be brought to him or them as aforesaid, give notice thereof in writing under his or their hand and seal, or hands and seals, to the person or persons convicted as aforesaid, appointing in such notice a time and place for his, her, or their attending, in order to make out and prove his, her, or their property in such materials so taken and detained as aforesaid; which time so to be appointed, shall be within twenty-one days, and not less than eighteen days after such notice given; and if the person or persons so convicted, shall be detained in any house of correction, or other prison as aforesaid, the said justice or justices shall also cause a copy of the said notice, attested under his or their hand and seal, or hands and seals, to be

delivered to the master or keeper of such house of correction, or other prison; which master or keeper is hereby required to bring, or cause to be brought, before such justice or justices, the person or persons named in such notice, at the time and place therein specified, if the person or persons named in such notice be then in the custody of such master or keeper; and if any such master or keeper shall neglect or refuse so to do, such master or keeper shall, for every such neglect or refusal, forfeit to the person or persons respectively named in such notice, the full value of the materials so taken, detained, and sold; to be recovered by distress and sale of the goods and chattels of such master or keeper, by warrant under the hand and seal, or hands and seals of the justice or justices signing such notice, in case the said forfeiture shall not be immediately paid.

Seet. 6. " Provided also, and it is hereby further enacted, That if any Person ag-
person shall think himself or herself aggrieved by the judgment or order of
the said justice or justices, relating to the sale or disposal of the said ^{grieved may} appeal.
materials so found and detained as aforesaid, such person shall have liberty
to appeal against the judgment or order of the said justice or justices, to
the justices of the peace in the general or quarter-session of the peace
which shall be held for the same county, riding, division, city, liberty, or
town corporate, next after such judgment or order shall be given or made;
and that in the mean time the sale and disposal of such materials shall be
postponed; notice in writing under the hand of the person intending to ^{Notice of}
appeal, signifying such his or her intention, being given to the justice or ^{appeal to be}
justices by whom such order shall have been made, before the time ap- ^{given.}
pointed for the sale and disposal of such materials; and the justices of the
peace in the said general or quarter-sessions of the peace, are hereby au-
thorized and empowered to summon and examine witnesses upon oath
(or being of the people called quakers, upon their solemn affirmation)
and to hear and finally determine the matter of the said appeal; and in
case the said appellant shall not prosecute such his or her appeal, or for
any other cause the judgment of the said justice or justices by whom such
order shall have been made shall be affirmed, it shall and may be lawful to
and for the justices in the said general or quarter-sessions of the peace, to
award such costs as they, in their discretion, shall think reasonable to be
paid by the appellant for defraying the expences sustained by the defendant
or defendants in such appeal.

Seet. 7. " And be it further enacted by the authority aforesaid, That ^{Penalty on}
if any person or persons entrusted with any of the materials herein before ^{workmen not}
mentioned, in order to prepare, work up, or manufacture the same, shall ^{returning the}
not use all such materials in the preparing, working up, or manufacturing ^{remains of}
of the same, and shall neglect or delay, for the space of twenty one days ^{the materials,}
after such materials shall be prepared, worked up, or manufactured, to ^{within 21}
return (if required by the owner or owners of such materials so to do) so ^{days.}
much of the said materials as shall not be used as aforesaid, to the person
or persons entrusting him, her, or them therewith, such neglect or delay
shall be deemed and adjudged to be an imbezilling or purloining of such
materials; and the person or persons so neglecting or delaying, being
thereof convicted, in manner before prescribed for the conviction of

offenders against this act, shall suffer the like punishment, as persons convicted of imbezilling or purloining any of the materials herein before-mentioned, are by this act rendered subject and liable to.

Justice to issue
his warrant
upon com-
plaint of any
offence
against this
act.

Seet. 8. " And be it further enacted by the authority aforesaid, That it shall and may be lawful to and for any one justice of the peace of any county, riding, division, city, liberty, town, or place, and he is hereby required, upon complaint to him made upon oath, or (if the person complaining be of the people called Quakers) solemn affirmation of any offence committed against this act within the same county, riding, division, city, liberty, town, or place, to issue his warrant for apprehending and bringing before him, or before any other justice or justices of the peace of the same county, riding, division, city, liberty, town, or place, the person or persons charged with such offence; and the justice or justices, before whom such person or persons shall be brought, is and are hereby authorized and required to hear and determine the matter of every such complaint, and to proceed to conviction and judgement thereupon.

Journeyman
not compleat-
ing their
work, &c.

Seet. 9. " And, for the better regulating of the journeymen, and other persons employed as manufacturers or workers in the manufacture of felts or hats, and in the woollen, linen, fustian, cotton, iron, mohair, fur, hemp, flax, or silk manufactures, or any manufactures made up of wool, fur, hemp, flax, linen, cotton, mohair, or silk, or any of the said materials mixed one with another, be it further enacted by the authority aforesaid, That if any person, who, at any time after the said twenty-fourth day of *June*, one thousand seven hundred and forty-nine, shall be hired, retained, or employed to prepare or work up any of the manufactures herein before-mentioned for any one master, shall neglect or refuse the performance thereof, by procuring or permitting himself or herself to be subsequently retained or employed by any other master or person whatsoever, before he or she shall have compleated the work which he or she was first and originally so hired, retained, or employed to perform, and which was first delivered to him or her, then, and in every such case, the person so offending, being thereof lawfully convicted by the oath, or (being of the people called Quakers) affirmation of one or more credible witness or witnesses, before one or more justice or justices of the peace of the county, riding, division, city liberty, town or place, where the offence or offences shall be committed, shall be sent to the house of correction, there to be kept to hard labour for any time not exceeding one month.

Seet. 10. But this statute shall not repeal the 13 and 14 *Car. 2, c. 15*, nor 20 *Car. 2, c. 6*, nor 8 and 9 *Will. 3, c. 36*, which three acts see under this title, section (to Silkmasters.)

Seet. 12. Extends the provisions in 12 *Geo. 1, c. 34* (which see under this title, section (to Clothiers)) to persons employed in the manufactures enumerated in this act of 22 *Geo. c. 27*, and enacts that the forfeitures be inflicted as in the said act of 12 *Geo. 1, c. 34*.

STAT. 23 Geo. 2, c. 13 [A. D. 1750.] made, among other purposes, "for the more early and speedy determination of appeals, allowed in certain cases, by an act made in the last session of parliament, relating to persons employed in the several manufactures therein mentioned."

Stat. 9. And whereas by an act made in the last session of parliament 22 Geo. II. (intituled, *An act for the more effectual preventing of frauds and abuses committed by persons employed in the manufacture of hats, and in the woollen, linen, fustian, cotton, iron, leather, fur, hemp, flax, mohair, and silk manufactures; and for preventing unlawful combinations of journeymen dyers and journeymen hot-pressers, and of all persons employed in the said manufactures; and for the better payment of their wages*) it is, among other things, enacted, That if any person convicted of buying, receiving, or taking to pawn any of the materials in the said act mentioned, shall think himself or herself aggrieved by the judgment of the justice or justices before whom he or she shall have been convicted, such person shall have liberty to appeal to the justices at the next general or quarter-sessions of the peace which shall be held for the county, riding, division, city, liberty, town, or place where such judgment shall have been given; which justices, in the said general or quarter-sessions, are to hear and finally determine the matter of the said appeal: but whereas great delays and inconveniencies have arisen and may arise in the hearing and determining of such appeals, inasmuch as no provision is made by the said act in relation to the form or manner in which such convictions shall be drawn up; therefore, for preventing such delays and inconveniences for the future, be it further enacted by the authority aforesaid, That the justice or justices of the peace before whom any person shall be convicted, in manner prescribed by the said act, of buying, receiving, or taking to pawn any of the materials or wares therein mentioned, shall cause such conviction to be drawn up in the form and words following; (that is to say)

Middlesex, B E it remembered, That on the day of A form of
To wit, in the year of his majesty's conviction on
reign A. B. was convicted before me [or us] of his the recited
majesty's justices of the peace for the said county of act.
[or for the riding [or division] of the said county
of] or for the city, liberty, or town of
in the said county of
(as the case shall be) of buying, receiving, or taking to pawn
(as the case shall happen to be) (specifying the
materials or wares so bought, received, or taken to pawn) the pro-
perty of C. D. of in the county of
and by him [or her] delivered to to be
manufactured.

Given under my hand and seal [or our hands
and seals] the day and year aforesaid.

Not liable to which said form and conviction shall not be liable to be removed by
 be removed *certiorari* into his majesty's court of king's bench; and the said justice or
 by *certiorari*; justices before whom such conviction shall be had, shall cause the same,
 drawn up in the form aforesaid, to be fairly written upon parchment, and
 and transmit- transmitted to the next general or quarter-sessions of the peace to be held
 ted to the for the county, riding, division, city, town or liberty, wherein such conviction
 sessions. was had, to be filed and kept amongst the records of the said general
 or quarter-sessions: and in case the person or persons so convicted shall
 justices to appeal from the judgment of the said justice or justices to the said general
 hear appeals. or quarter-sessions, the justices in such general or quarter-sessions are hereby
 required, upon receiving the said conviction drawn up in the form
 aforesaid, to proceed to the hearing and determination of the matter of
 the said appeal, according to the directions of the said act; any law or
 usage to the contrary notwithstanding.

Servants

(to Husbandry, &c.)

STAT. 5 Eliz. c. 4, [A. D. 1562, intituled] "An act containing divers orders for artificers, labourers, servants of husbandry and apprentices."

No person shall retain a servant in these sciences, under one whole year.

SECT. 3. "And be it further enacted by the authority aforesaid, That no manner of person or persons after the aforesaid last day of *September* now next ensuing, shall retain, hire, or take into service, or cause to be retained or hired, or taken into service, nor any person shall be retained, hired or taken into service, by any means or colour, to work for any less time or term than for one whole year, in any of the sciences, crafts, mysteries or arts of clothiers, woollen cloth weavers, tuckers, fullers, cloth-workers, sheermen, dyers, hosiers, taylors, shoemakers, tanners, pewterers, bakers, brewers, glovers, cutlers, smiths, farriers, carriers, saddlers, spurriers, turners, cappers, hatmakers or feltmakers, bowyers, fletchers, arrow-head-makers, butchers, cooks or millers.

No person shall put away his servant; nor shall any servant depart from his master, before the end of his time.

SECT. 5. "And be it further enacted, That no person which shall retain any servant, shall put away his or her said servant; (2) and that no person retained according to this statute, shall depart from his master, mistress or dame, before the end of his or her term; (3) upon the pain hereafter mentioned; (4) unless it be for some reasonable and sufficient cause or matter, or be allowed before two justices of peace, or one at the least, within the said county, or before the mayor or other chief officer of the

the city, borough or town corporate wherein the said master, mistress or dame inhabiteth, to whom any of the parties grieved shall complain; (5) which said justices or justice, mayor or chief officer, shall have and take upon them or him the hearing and ordering of the matter betwixt the said master or mistress, or dame and servant, according to the equity of the cause.

The cause of putting away servants, or their departing, to be determined by a justice of peace, mayor, bailiff, &c.

Seet. 6. " And that no such master, mistress or dame, shall put away any such servant at the end of his term, or that any such servant shall depart from his said master, mistress or dame at the end of his term, without one quarter's warning given before the end of his said term, either by the said master, mistress or dame, or servant, the one to the other, upon the pain hereafter ensuing.

No servant shall depart, or be put away, but upon a quarter's warning.

Seet. 7. And be it further enacted by the authority aforesaid, That every person between the age of twelve years, and the age of sixty years, not being lawfully retained, nor apprentice with any fisherman or mariner haunting the seas; (2) nor being in service with any kidder, or carrier of any corn, grain or meal for provision of the city of *London*; (3) nor with any husbandman in husbandry; (4) nor in any city, town corporate, or market-town, in any the arts or sciences limited or appointed by this statute to have or take apprentices; (5) nor being retained by the year, or half the year at the least, for the digging, seeking, finding, getting, melting, fining, working, trying, making of any silver, tin, lead, iron, copper, stone, sea-coal, stone-coal, moor coal, or cherk coal; (6) nor being occupied in or about the making of any glass; (7) nor being a gentleman born, nor being a student or scholar in any of the universities, or in any school; (8) nor having lands, tenements, rents, or hereditaments, for term of life, or of one estate of inheritance of the clear yearly value of forty shillings; (9) nor being worth in goods and chattles to the value of ten pounds; (10) nor having a father or mother then living, or other ancestor whose heir apparent he is, then having lands, tenements or hereditaments, of the yearly value of ten pound, or above, or goods or chattels of the value of forty pound; (11) nor being a necessary or convenient officer or servant lawfully retained, as is aforesaid; (12) nor having a convenient farm or holding, whereupon he may or shall employ his labour; (13) nor being otherwise lawfully retained, according to the true meaning of this statute; (14) shall after the aforesaid last day of *September* now next ensuing, by virtue of this statute, be compelled to be retained to serve in husbandry by the year, with any person that keepeth husbandry, and will require any such person so to serve within the same shire where he shall be so required.

What sort of persons are compellable to serve by the year in husbandry.

Seet. 8. " And be it further enacted by the authority of this present parliament, That if any person after he hath retained any servant, shall put away the same servant before the end of his term, unless it be for some reasonable and sufficient cause, to be allowed, as is aforesaid; (2) or if any such master, mistress or dame, shall put away any such servant at the end of his term, without one quarter's warning given before the said end, as is above remembred; (3) that then every such master, mis-

The forfeiture for putting away his servant within his term, or at the end of his term, without warning.

tres or dame so offending, unless he or they be able to prove by two such sufficient witnesses, such reasonable and sufficient cause of putting away of their servant or servants, during their term, or a quarter's warning given afore the end of the said term, as is aforesaid, before the justices of Oyer and Terminer, justices of the assize, justices of peace in the quarter-sessions, or before the mayor or other head officer of any city, borough or town-corporate, and two aldermen, or two other discreet burghesses of the same city, borough, or town corporate, if there be no aldermen, or before the lord president and council established in the marches of *Wales*, or before the lord president and council for the time being established in the north parts, shall forfeit the sum of forty shillings.

The punishment of a servant which performeth not his duty in service or departure.

Stat. 9. " And if any servant retained according to the form of this estatute, depart from his master, mistress or dame's service, before the end of his term, unless it be for some reasonable and sufficient cause, to be allowed, as is aforesaid; (2) or if any servant at the end of his term, depart from his said master, mistress or dame's service without one quarter's warning given before the end of his said term, in form aforesaid, and before two lawful witnesses; (3) *or if any person or persons, compellable and bounden to be retainers, and to serve in husbandry, or in any other the arts, sciences or mysteries above remembred, by the year or otherwise, do (upon request made) refuse to serve for the wages that shall be limited, rated and appointed, according to the form of this statute;* (4) *or promise or covenant to serve, and do not serve according to the tenour of the same;* (5) That then every servant so departing away, and every person so refusing to serve for such wages, upon complaint thereof made by the master, mistress or dame of the said servant, or by the party to or with whom the said refusal is made, or promise not kept, to two justices of peace of the county, or to the mayor or other head officer of the city, borough or town corporate, and two aldermen, or two other discreet burghesses of the same city, borough or town corporate, if there be no aldermen, where the said master, mistress or dame, or the said party to or with whom the said refusal is made, and promise not kept, dwelleth, or to either of the said lords presidents and council of *Wales*, and the north, the said justices, lords presidents and councils, and also the said mayors or other head officers, and other persons of cities, boroughs, or towns corporate, or any of them, as is aforesaid, shall have power by force of this statute, to hear and examine the matter; (6) and finding the said servant, or the said party so refusing faulty in the premisses, upon such proofs and good matter as to their discretions shall be thought sufficient to commit him or them to ward, there to remain without bail or mainprize, until the said servant or party so offending shall be bound to the party to whom the offence shall be made, to serve and continue with him for the wages that then shall be limited and appointed, according to the tenour and form of this estatute, and to be discharged upon his delivery, without paying any fee to the gaoler where he or they shall be so imprisoned.

Women compellable to serve, that be

Stat. 21. " And be it further enacted by the authority aforesaid, That two justices of peace, the mayor or other head officer of any city, borough,

or

or town corporate, and two aldermen, or two other discreet burgessees of above twelve^{and under for-} the same city, borough, or town corporate, if there be no aldermen, shall and may, by virtue hereof, appoint any such woman as is of the age of twelve years, and under the age of forty years, and unmarried, and forth^{ty years old, unmarried, and forth of} of service, as they shall think meet, to serve, to be retained or serve by service. the year, or by the week or day, for such wages, and in such reasonable fort and manner as they shall think meet; (2) and if any such woman shall refuse so to serve, then it shall be lawful for the said justices of peace, mayor, or head officers, to commit such woman to ward, until she shall be bounden to serve as is aforesaid.

Sec. 39. "And be it enacted by authority aforesaid, That the one half^{Who shall have the forfeitures mentioned in this statute.} of all forfeitures and penalties expressed and mentioned in this estatute, other than such as are expressly otherwise appointed, shall be to our sovereign lady the queen's majesty, her heirs and successors, and the other moiety to him or them that shall sue for the same in any of the queen's majesty's courts of record, or before any of the justices of *Over and Terminer*, or before any other justices, or president and council before remembered, by action of debt, information, bill of complaint, or otherwise; in which actions or suits, no protections, wager of law or essoin shall be allowed; (2) and that the said justices, or two of them, whereof one to be of the *quorum*, and the said presidents and council, as is aforesaid, and the said mayors or other head officers of cities or towns corporate, shall have full power and authority to hear and determine all and every offence or offences that shall be committed or done against this estatute, or against any branch thereof, as well upon indictment to be taken for them in the sessions of the peace, as upon information, action of debt, or bill of complaint to be sued or exhibited by any person; (3) and shall and may by virtue hereof, make process against the defendant, and award execution, as in any other case they lawfully may by any the laws and statutes of this realm; (4) and shall yearly in *Michaelmas* term certify by estreat, the fines and forfeitures of every the offences contained in this estatute, that shall be found before them, into the court of exchequer, in like sort and form as they be bound to certify the estreats for other offences and forfeitures to be laid before them; any thing in this statute contained to the contrary notwithstanding.

Sec. 45. "Provided always, and be it enacted by the authority aforesaid, That all manner amerciaments, fines, issues and forfeitures which shall arise, grow, or come by reason of any offences or defaults mentioned in this act, or any branch thereof, within any city or town corporate, shall be levied, gathered and received by such person or persons of the same city or town corporate, as shall be appointed by the mayor, or other head officers mentioned in this said act, to the use and maintenance of the same city or town corporate, in such case and condition as any manner other amerciaments, fines, issues or forfeitures have been used to be levied and employed within the same city or town corporate, by reason of any grant or charter from the queen's majesty that now is, or of any her grace's noble progenitors, made and granted to the same city, borough, or town corporate;

Moor, 886.
1 Cro. 499.
Justices of peace, mayor, &c. may hear and determine all offences committed against this statute 31 El. c. 5.
1 Salk. 370.

corporate; any thing or clause before-mentioned and expressed in this act to the contrary notwithstanding."

STAT. 20 Geo. 2, c. 19. [A. D. 1747, intituled] "An act for the better adjusting and more easy recovery of the wages of certain servants; and for the better regulation of such servants, and of certain apprentices."

Differences between masters and certain servants, to be determined by a justice of the peace where the master resides.

Justices to examine servants, &c. upon oath,

and make order for payment of wages due, if under a certain sum.

On nonpayment, to be levied by distress and sale.

Justice to hear masters complain on oath;

"Whereas the laws now in being, for the better regulation of servants, and for the payment of wages to them, and to artificers, handicraftsmen, and labourers, are insufficient and defective: for remedy whereof, be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That from and after the twenty-fifth day of *March*, which will be in the year of our Lord one thousand seven hundred and forty-seven, all complaints, differences, and disputes, which shall happen or arise between masters or mistresses, and servants in husbandry, who shall be hired for one year, or longer, or which shall happen or arise between masters and mistresses, and artificers, handicraftsmen, miners, colliers, keelmen, pitmen, glassmen, potters, and other labourers employed for any certain time, or in any other manner, shall be heard and determined by one or more justice or justices of the peace of the county, riding, city, liberty, town corporate, or place where such master or mistress shall inhabit, although no rate or assessment of wages has been made that year by the justices of the peace of the shire, riding, or liberty, or by the mayor, bailiffs, or other head officer, where such complaints shall be made, or where such differences or disputes shall arise; which said justice or justices is and are hereby impowered to examine upon oath, any such servant, artificer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, or other labourer, or any other witness or witnesses, touching any such complaint, difference or dispute, and to make such order for payment of so much wages to such servant, artificer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, or other labourer, as to such justice or justices shall seem just and reasonable, provided that the sum in question do not exceed ten pounds with regard to any servant, nor five pounds with regard to any artificer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, or labourer; and in case of refusal or nonpayment of any sums so ordered, by the space of one and twenty days next after such determination, such justice and justices shall and may issue forth his and their warrant to levy the same by distress and sale of the goods and chattels of such master or mistress, or person employing such artificer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, or other labourer, rendering the overplus to the owners, after payment of the charges of such distress and sale.

Sec. 2. "And be it further enacted by the authority aforesaid, That it shall and may be lawful to and for such justice or justices, upon application or complaint made, upon oath, by any master, mistress, or employer against any such servant, artificer, handicraftsman, miner, collier, keelman

keelman, pitman, glassman, potter, or labourer, touching or concerning any misdemeanour, miscarriage, or ill-behaviour, in such his or her service or employment (which oath such justice or justices is and are hereby empowered to administer) to hear, examine, and determine the same; and to punish the offender by commitment to the house of correction, there to remain and be corrected, and held to hard labour for a reasonable time, not exceeding one calendar month, or otherwise by abating some part of his or her wages, or by discharging such servant, artificer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, or labourer, from his, her, or their service or employment: And in like manner also it shall and may be lawful to and for such justice or justices, upon any complaint or application, upon oath, by any such servant, artificer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, or other labourer, against such master, mistress, or employer, touching or concerning any misuse, refusal of necessary provision, cruelty, or other ill-treatment of, or towards such servant, artificer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, or other labourer, and to summon such master, mistress, or employer, to appear before such justice or justices, at a reasonable time to be prefixed in such summons; and such justice or justices shall and may examine into the matter of such complaint, whether such master, mistress, or employer shall appear, or not; proof being made, upon oath, of his or her being duly summoned; and upon proof thereof made, upon oath, to his or their satisfaction, to discharge such servant, artificer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, or other labourer, of and from his said service and employment; which discharge shall be given under the hand and seal, or hands and seals, of such justice or justices *gratis*. See the remainder of this act under **Apprentices**, page 104.

and to punish the offender by commitment, abatement of wages, or dismissal.

Justices to hear servant's complaints on oath,

and to summon the master, &c.

and upon satisfactory proof, to discharge the servant.

By *Stat. 31 Geo. 2, c. 11, sect. 3*, this act is extended to servants employed in husbandry, though hired for less time than a year. See title **Poor**, page 401.

Servants

(to Leathern Manufactures.)

STAT. 13 Geo. 2, c. 8. [A. D. 1740.] Made, among other purposes, "for extending the act 1 Ann, st. 2, c. 18, to the manufactures of leather."

Sect.

Servants (to Leathern Manufactures.)

Workers in
leather to pay
double the
damage of
imbeizilment.

One half to
the sufferer,
the other to
the poor of
th parish;

to be levied
on offender's
goods,

SECT. 2. " And whereas many frauds and abuses have of late been likewise committed by persons employed in cutting out and manufacturing of skins, leather, and other materials into gloves, breeches, boots, shoes, slippers, and other wares and manufactures, by purloining, embezilling, secreting, selling, pawning, or exchanging such skins, leather, and other materials, or in some other manner, wherefore it is become necessary to make provision for discovering, preventing, and punishing such offences; and for the better regulating such persons as are or shall be employed in the premises last mentioned, be it further enacted by the authority aforesaid, That if from and after the said first day of *May*, one thousand seven hundred and forty, any person or persons hired or employed, or to be hired or employed, in cutting, paring, washing, dressing, sewing, making up, or otherwise manufacturing of gloves, breeches, leather, skins, boots, shoes, slippers, wares, or other goods or materials to be made use of in any of the trades or employments, or in manner last mentioned, or in any branch or particular thereof, shall fraudulently purloin, embezel, secret, sell, pawn, or exchange all or any part of the gloves, breeches, leather, skins, parings, or threads of gloves, or leather, or other materials, with which he, she, or they shall be intrusted to work up or manufacture, or shall purloin, imbezel, secret, sell, pawn, or exchange any gloves, breeches, boots, shoes, slippers, or wares, when made, wrought up, or manufactured, or do or willfully permit any other act, whereby to lessen the value of such or any part of such gloves, breeches, leather, skins, parings, or threads of gloves, or leather, boots, shoes, slippers, or other wares last particularized, either before or after the same shall be respectively so made into wares, and be thereof lawfully convicted by the oath or affirmation of the master or owner of such goods or wares, or any other credible witness or witnesses, or by the confession of the person or persons charged with the fact, before one or more justice or justices of the peace for the county, riding, division, city, town, or place where such offence shall be committed, or where the party or parties so charged shall reside or inhabit (which oath or affirmation such justice or justices is and are hereby impowered to administer and take) such justice or justices shall and may award the person or persons so offending, to make a reasonable and suitable recompence and satisfaction for every offence, to the parties respectively injured, for the damage by them sustained, so as the same do not exceed double the value of the gloves, breeches, leather, boots, shoes, slippers, wares, goods, or materials, by such offender or offenders so purloined or embezilled, secreted, sold, pawned, or exchanged; one half thereof to go to the party or parties grieved, and the other half thereof to go and be applied to the use of the poor of the parish or place where such offence shall be committed, together with the full charges attending such conviction, to be levied by warrant under the hand and seal or hands and seals of such justice or justices by distress and sale of the offender's goods, rendering the overplus upon demand to the owner; but if such offender or offenders shall not have goods sufficient to answer for levying the forfeitures and the expences and charges attending

the premises, and shall also neglect or refuse immediately to pay the same, that then the said offender and offenders shall by like warrant of such justice or justices last described be for every distinct offence committed to the house of correction, or other publick prison of such county, riding, city, town, or place, and there kept to hard labour for the space of fourteen days, and shall be there likewise whipped in such manner as the said justice or justices shall order and direct; and in case also of a subsequent conviction for or on a second or any other such like offence, the person or persons so offending for every second or other subsequent offence, being thereof convicted in manner before mentioned, shall forfeit four times the value of the damages which the owner or owners of such materials, either before or after the same shall be respectively made up into wares, shall sustain thereby, together with such costs of prosecution as shall be adjudged reasonable by the justice before whom such offender, or offenders shall be thereof respectively convicted; and in case immediate payment of the respective forfeitures, together with such costs of prosecution as aforesaid, shall be neglected or refused to be made, that then it shall and may be lawful to and for such justice to commit the offender or offenders last described to the house of correction, or other publick prison, to be there kept to hard labour for any time not exceeding three months, nor less than one month, as to such justice shall seem reasonable; and also during the time such offender or offenders respective commitment or commitments, shall cause the said offender or offenders to be publickly whipped in the market town and be where such offender or offenders shall be respectively committed, at the market place or cross of such town, once or oftner as to such justice shall seem reasonable.

or sent to the house of correction for a fortnight, and there whipped;

and for any subsequent offence to forfeit four times the value,

or be sent to the house of correction, not exceeding three months, or less than one;

and be publickly whipped.

Sec. 5. " And be it further enacted by the authority aforesaid, That every person and persons who shall knowingly or willingly, from and after the said first day of May, one thousand seven hundred and forty, buy or receive, accept or take, by way of pawn, pledge, or sale, or in any other manner, of or from any or either the persons offending in either of the particulars in this act last mentioned, or of or from any other person or persons whatsoever (except of or from the person or persons in whom the property of such gloves, breeches, leather, boots, shoes, slippers, wares, goods, or other materials shall be at the time of such sale, pawn, or exchange) or offer so to do, such person or persons offending therein respectively, shall for every offence, being convicted thereof in manner aforesaid, make such suitable and reasonable recompence and satisfaction within two days next after the matter of fact shall from time to time be determined by any one or more justice or justices as aforesaid, upon hearing the same (he and they being hereby in this respect also empowered so to do) or else be subject to such distress, and for want of sufficient distress to be liable to the like punishment as is hereby directed to be inflicted on such person or persons as shall purloin, imbezil, secrete, sell, pawn, or exchange any gloves, breeches, leather, boots, shoes, slip-

Receivers subject to the same penalties.

pers, wares, goods, or other materials or effects of that sort as aforesaid, and so in like manner for any second and every other subsequent offence.

Workmen to be paid their wages in money;

Stat. 6. And to prevent oppression of the labourers and workmen employed in any respect in or about making or manufacturing of gloves, breeches, boots, shoes, slippers, wares, or goods of that sort before mentioned; be it enacted by the authority aforesaid, That from and after the said first day of *May*, one thousand seven hundred and forty, all payments and satisfaction hereafter to be made to any such labourers, manufacturers, and workmen, employed as aforesaid, for any work by them done in and about such manufactures, shall be in and of the lawful coin of this realm only, and not by any victuals, goods, or commodities whatsoever, in lieu thereof (except at and by his and their request and consent only) and all goods and materials delivered out to be wrought up in the manufacture last mentioned, shall be delivered with a declaration at the same time, of the true weight, quantity, or sale thereof, on pain that every offender in either of the said cases shall forfeit and pay to such labourer, manufacturer, or worker, double the value of what shall be due for such work by him, her, or them done and performed; and if any such labourer, manufacturer, or worker, as is last described, shall be guilty of any fraud, abuse, neglect, or default in the work by him, her, or them undertaken to be done, then such labourer, manufacturer, or worker shall allow and answer to the owner of such work double the damages thereby sustained.

but to suffer double damages, if found guilty of neglect, &c.

Complaints to be heard and determined by two justices.

Stat. 7. " And be it further enacted by the authority aforesaid, That all wages, demands, frauds, abuses, neglects, and defaults of labourers, manufacturers, and workers in the trades last above mentioned, for or concerning any work done in that manufacture, shall and may be heard and determined by any two justices of the peace of the county, riding, division, city, town, or place, where the matter in controversy shall happen or arise, who are hereby impowered to summon and examine witnesses on oath or affirmation, concerning the same, which oath or affirmation the said justices are to administer and take.

Journeyman to perform the business engaged in,

Stat. 8. " And for the better regulating the journeymen and other persons employed as manufacturers or workers in the trade or business last above mentioned; be it further enacted by the authority aforesaid, That all and every person and persons who shall at any time after the first day of *May*, one thousand seven hundred and forty, be first retained or employed in the making up of any gloves, breeches, boots, shoes, slippers, or other wares as aforesaid, for any one master, and shall neglect the performance thereof, either by procuring or permitting himself to be subsequently retained or employed by any other master or person whatsoever, before he or they shall have compleated the work or service in or to do which he or they was or were first and originally so retained or employed, and shall be first delivered to him or them; then and in every such case every person so offending, being thereof lawfully convicted by the oath or oaths, affirmation or affirmations, of one or more credible witness

or be sent to or witnesses, before one or more justice or justices of the peace, where the offence

offence or offences shall be committed, the person or persons so convicted shall be sent to the house of correction, there to be kept to hard labour for any time not exceeding one month.

Stat. 9. " Provided always, and be it further enacted by the authority aforesaid, That if any person or persons shall think him, her, or themselves aggrieved by any judgment or order of the said two justices, it shall and may be lawful for such person and persons to appeal from the judgement, order, and determination of the said two justices, to the justices of the peace at their next general quarter sessions of the peace, to be held for the same county, riding, division, city, town, or place, where the matter in dispute shall arise (giving eight days notice of such appeal to the person or persons against whom such appeal shall be brought and prosecuted) and such justices of the peace, at their next general quarter sessions, are hereby empowered to summon and examine witnesses on oath or affirmation (which oath or affirmation they are hereby empowered to administer and take) and to hear and finally determine the matter of the said appeal, and at such quarter sessions shall award and order to the party on whose behalf such appeal is determined, such reasonable costs and charges to be paid by such appellant, or by the person or persons appealed against, in regard of such appeal, as to the said justices or the major part of them shall seem meet; but no order made by the said two justices of the peace as aforesaid shall be appealed from, quashed, or vacated for want of form only.

Servants to Shipmasters.

STAT. 2 Geo. 2, c. 36. See this act under **Seamen.**

Servants to Shoemakers.

STAT. 9 Geo. 1, c. 27. [*A. D. 1722, intituled,*] " An act for preventing journeymen shoemakers selling, exchanging, or pawning boots, shoes, slippers, cut leather, or other materials for making boots, shoes, or slippers, and for better regulating the said journeymen."

Servants (to Shoemakers.)

Stat. 1. "Whereas great frauds and abuses are frequently practised by journeymen shoemakers, and others employed as such in the art or mystery of cordwainers, and their accomplices, in purloining, imbezilling, selling, pawning, or exchanging for worse, the good leather, and other materials, delivered to, or entrusted with them, for making boots, shoes, slippers, and other-wares; and it is necessary to make further provision for discovering and punishing such offences, and for better regulating the said journeymen: May it therefore please your most excellent majesty, that it may be enacted; and be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, That if any journeyman shoemaker, or other person hired or employed as such, within the bills of mortality, shall, after the twenty-fourth day of *June*, in the year of our Lord one thousand seven hundred and twenty-three, be accused by the master so hiring or employing such journeyman, or other person aforesaid, of having, after the said twenty-fourth day of *June*, one thousand seven hundred and twenty-three, fraudulently purloined, imbezilled, sold, pawned, or exchanged, any boots, shoes, slippers, cut leather, lace, silk, lasts, or other materials for making boots, shoes, slippers, or other wares, not being the proper goods of the person so accused, it shall and may be lawful to and for any one or more of his majesty's justices of the peace for the county, city, town, or place where such offence shall be committed, or where the party so accused shall reside or inhabit, and such justice or justices is and are hereby respectively authorized and required, upon complaint, or information upon oath of such offence (which oath or oaths such justice or justices is and are hereby empowered to administer) to summon the party or parties complained of, or to issue his or their warrant or warrants, to apprehend and bring before him or them the person or persons so accused, complained of, or suspected, and upon his or their appearance, or default to appear, to proceed to examine the matter of fact with which they are charged, and upon due proof thereof made, either by confession of the party or parties so accused, or upon the oath or oaths of one or more credible person or persons, to determine the same, and to convict the offender or offenders, and upon such conviction immediately to award to the party or parties injured, reasonable recompence and satisfaction for the damage, loss, and charges by them sustained, and upon the neglecting or refusing immediately to pay the same, to levy the same by warrant or warrants, under the hand and seal, or hands and seals of such justice or justices, upon the goods and chattels of the offender or offenders, rendering the overplus to the owner or owners thereof, and for want of sufficient distress, to cause the offender or offenders to be whipt in the parish or place where the offence shall be committed; and in case of conviction for any second or other such offence, to commit the offender or offenders to the house of correction, there to remain and be kept to hard labour, for any time not exceeding one month, nor less than fourteen days, as to such justice or justices shall seem meet and reasonable.

On due proof of journeyman's purloining boots, &c. a justice may convict him,

and may award satisfaction for damage sustained,

which may be levied by distress.

Stat. 2. " And for more effectual deterring and punishing accomplices and confederates in the said frauds and abuses, Be it enacted by the authority aforesaid, That all and every person or persons, who shall, from and after the said twenty-fourth day of *June*, one thousand seven hundred and twenty-three, buy or receive, or take in pawn, of or from any journeyman shoemaker, or other person hired or employed as such, in manner as aforesaid, or from any other person whatsoever, any boots, shoes, slippers, cut leather, lace, silk, lasts, or other materials for making boots, shoes, slippers, or other wares, not being the proper goods of the person or persons, selling or pawning, or offering to sell or pawn the same, shall for every such offence (being lawfully convicted thereof, in manner as aforesaid) make such reasonable recompence within two days after the matter of fact shall be determined, as upon hearing of the same shall be awarded, in manner as aforesaid, or else be subject to such distress, and for want of sufficient distress, to be liable to the like punishment as is hereby inflicted, or intended to be inflicted on such journeyman, journey-men, or other person or persons, so purloining, imbezilling, selling, pawning, or exchanging, such goods or materials, as aforesaid.

Confederates
liable to the
same punish-
ment.

Stat. 3. " And for the more effectual discovering where any such leather or other materials, as aforesaid, which from and after the said twenty-fourth day of *June*, one thousand seven hundred and twenty-three, shall be fraudulently sold, exchanged, or pawned; be it enacted by the authority aforesaid, That it shall and may be lawful for any two or more of his majesty's justices of the peace, dwelling within the limits aforesaid, upon any complaint or information upon oath, to issue their warrant or warrants for searching in the day-time, the house, warehouse, or other place of such person or persons, as such justices shall have just cause to suspect to have received, bought, or taken to pawn, any such goods so fraudulently imbezilled or purloined, as aforesaid, and for that purpose, upon refusal, to break open any such house, warehouse, or other place, if there shall be occasion; and that every person, who shall oppose and hinder such search, shall, for every such offence, forfeit the sum of ten pounds to any person or persons, who shall inform and sue for the same, within two calendar months after the offence committed, in any of his majesty's courts of record at *Westminster*, by action of debt, bill, plaint, or information, wherein no essoin, privilege, protection, order of restraint, wager of law, or more than one imparlance shall be granted or allowed; and if it shall appear by the oath of one or more credible witness or witnessess, or upon search of such house, warehouse, or other place, it shall be found, such person or persons hath or have in his or their custody or possession any such goods so fraudulently sold, exchanged, or pawned, as aforesaid, such justices shall cause the same to be restored to the owner or owners, proprietor or proprietors thereof, and oblige the party or parties so offending, to make recompence and satisfaction to such owner, for the loss and damage in detaining such goods, and charges in getting the same, and upon refusal of the party or parties so to do, to be subject to the like punishment, as shall be inflicted, or hereby provided to be inflicted

Justices may
issue warrants,
&c. to search
for leather,
&c. purloin-
ed;

and may
cause pawned
goods to be
restored to
the owners.

Servants (to Silkmasters.)

sifted, on such journeyman or agent, or other person so fraudulently imbezilling, purloining, selling, exchanging, or pawning any such goods, as aforesaid.

Persons retained by a new master before the work delivered by a former is done, shall be sent to the house of correction.

Sett. 4. "And for the better regulating the said journeymen shoemakers, Be it further enacted by the authority aforesaid, That all and every person and persons, who shall at any time hereafter be retained or employed in the making up of any boots, shoes, and slippers, or other wares for any one master, and shall neglect the performance thereof, by suffering himself to be retained or employed by any other master, or other person whatsoever, before he or they shall have completed the same, and finished the said work first delivered to him or them, then in every such case, every person so offending, being thereof lawfully convicted by the oath or oaths of one or more credible witness or witnesses, before one or more justice or justices of the peace, where the offences shall be committed, the person or persons so convicted, shall be sent to the house of correction, there to be kept to hard labour for any time not exceeding one month.

Persons aggrieved may appeal to the sessions.

Sett. 5. "Provided always, That it shall and may be lawful for any person aggrieved, by any order or orders to be made by any such justice or justices, to appeal to the next quarter sessions of the peace, to be holden for the county, city, town or place where such order shall be made, giving eight days notice of such appeal, and such justices at their quarter-sessions shall hear the matter, and shall have power to make satisfaction to either party, as to them shall seem just, whose determination therein shall be final.

Servants (to Silkmasters.)

ST A T. 13 and 14 *Car.* 2, *c.* 15. [*A. D.* 1662, *intituled*] "An act for regulating the trade of silk-throwing."

None shall use the trade of a silk-thrower, but such as have served as ap-

Sett. 2. "For remedy whereof, be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and the commons in this present parliament assembled, and by authority of the same, That from and after the twenty-fifth day of *December*, which shall be in the year of our Lord one thousand six hundred sixty and two, no person or persons whatsoever, shall directly or indirectly use, exercise, continue or set up the said trade, art or mystery of a silk-thrower within this realm of *England*, unless such as are or shall be apprentices

prentices to the said trade, or shall have served seven years apprenticeship thereunto at the least; (2) upon pain that every person so offending contrary to this act, shall pay, forfeit and lose the sum of forty shillings for every month the said person shall use or exercise the said trade; the one moiety thereof to the use of his said majesty, his heirs and successors, and the other moiety thereof to such person or persons as shall sue for the same in any of the courts of record within this realm of *England*, or before any the justices of *Oyer and Terminer*, or the justices of the peace at their quarter-sessions of the peace, by action of debt, bill, plaint or information, or by any other lawful ways or means whatsoever, wherein no protection, wager of law, or essoin shall be allowed.

prentices
seven years.
The penalty.
Before whom
to be reco-
vered.

Sett. 6. "And whereas there is a necessity lying upon the silk-throwers, to deliver to their winders or doublers, considerable quantities of silk, which being of a good value, is by evil-disposed persons many times unjustly, deceitfully and falsely purloined, imbezilled, pawned, sold and detained, to the great damage, and sometimes the utter undoing of the thrower, who employs the said persons: (2) Be it further enacted by the authority aforesaid, That every such silk-winder and doubler, who shall at any time hereafter, unjustly, or deceitfully and falsely purloin, imbezil, pawn, sell or detain any part of silk delivered, or to be delivered by any silk-thrower, or other person, to them or any of them, to wind or double, That in every such case and cases, as well the winder or journeyman so offending, as the buyer and buyers, receiver and receivers of such silk, being thereof lawfully convicted, by confession of the party or parties so offending, or by one witness upon oath before one or more of the justices of peace of the county or liberty where the same offence or offences shall be committed; or if it be within any city or town corporate, before the mayor, bailiff, or chief officer of the said city or town corporate, who by force of this act are empowered and authorized to minister the same oath, and finally to hear and determine all and every the offences aforesaid, and to give and make to the party and parties grieved such recompence and satisfaction for such their damage and loss, and charges thereabouts, as by the said justice or justices, or chief officers shall be ordered and appointed.

The punish-
ment of silk-
winders that
imbezil goods
delivered to
them.

Sett. 7. "Provided, That no more damage be given or awarded, than the party grieved shall prove he is damnified, and hath expended in looking after the same; and if the party or parties so offending shall not be able or sufficient to make recompence or satisfaction for the said offence, nor do make recompence or satisfaction for the same offence or offences within fourteen days next after such conviction in such manner and form, as by the justice or justices, or chief officers shall be ordered and appointed, as aforesaid, then the party or parties so offending, for the first offence shall be apprehended and whipped, or set in the stocks in the place where the offence is committed, or in some market-town in the said county near unto the place where the offence or offences aforesaid shall be committed, as shall be limited and appointed by the said justice or justices of the peace, or chief officers, and for the second offence, to incur the like,

Servants (to Silkmasters.)

like, or such further punishment by whipping or being put in the stocks, as the said justice or justices of the peace, or chief officers shall in their discretion think fit and convenient.

STAT. 20 *Car.* 2, c. 6. [*A. D.* 1668, intituled] “An act to regulate the trade of silk-throwing.”

Silk-winders
or doublers
offending, to
be committed
to prison.

13 & 14 *Car.* 2,
c. 15, sect. 6.

Seet. 3. “And be it enacted by the authority aforesaid, That if any silk-winder or doubler shall hereafter be found faulty in unjustly, deceitfully, or falsely purloining, imbezilling, pawning, selling, or detaining any silk committed to his or their trust, That then any justice of peace, mayor, bailiff, or chief officer of any county, liberty, or corporation, shall immediately upon conviction by confession of the party, or upon the oath of one witness before any of the said justice or justices of the peace, or other officer, commit to prison or to the house of correction the offender, till satisfaction be given to the party wronged, or punishment inflicted, as by an act of parliament, intituled, *An act for regulating the trade of silk throwing*, made this present parliament, is directed and appointed; any thing in the said act contained to the contrary hereof in any wise notwithstanding.”

STAT. 8 & 9 *Will.* 3, c. 36. [*A. D.* 1697,] *Made, among other purposes,* “for the further encouragement of the manufacture of lustrings and alamodes within this realm.”

Persons imbe-
zelling, &c.
any silk deli-
vered to be
wrought up,
and also buy-
ers, receivers,
&c. to be li-
able to the
penalties in
the act 13 &
14 *Car.* 2, c
15, & 20 *Car.*
2, c. 6.

Seet. 6. “And whereas the silk manufacturers are obliged, from time to time, to deliver to their agents, journeymen, warpers and winders, great quantities of silk to work up, which is often by them imbezelled, sold, or pawned, to the great detriment of the silk manufacturers of this kingdom: Be it enacted by the authority aforesaid, That all and every person or persons whosoever, that shall imbezel, pawn, sell, or detain any of the silk so delivered, or after the same is wrought up, and also all and every receiver and receivers, buyer and buyers, or such as take to pawn any of the said goods, shall be subject and liable to all the penalties, forfeitures, and punishments contained, mentioned, and provided, in one act of parliament made in the thirteenth and fourteenth years of the reign of king *Charles* the second, intituled, *An act for regulating the trade of silk throwing*; and in another act made in the twentieth year of the said king *Charles* the second, intituled, *An act to regulate the trade of silk throwing*.”

Servants (to Taylors.)

ST A T. 7 *Geo. 1, st. 1, c. 13*, “An act for regulating the journey-men taylors within the weekly bills of mortality.”

“Whereas great numbers of journeymen taylors, in and about the cities of *London* and *Westminster*, and others, who have served apprenticeships, or been brought up in the art or mystery of a taylor, have lately departed from their services without just cause, and have entred into combinations to advance their wages to unreasonable prices, and lessen their usual hours of work; which is of evil example, and manifestly tends to the prejudice of trade, to the encouragement of idleness, and to the great encrease of the poor: For remedy thereof, may it please your most excellent majesty, that it may be enacted; And be it enacted by the king’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, That all contracts, covenants, or agreements, in writing, or not in writing, heretofore made or entred into, or hereafter to be made or entred into, by or between any persons brought up in, or professing, using, or exercising the art and mystery of a taylor, or journeyman taylor, in making up mens or women’s work, in the cities of *London* and *Westminster*, or either of them, or within the weekly bills of mortality, for advancing their wages, or for lessening their usual hours of work, shall be, and are hereby declared to be illegal, null, and void to all intents and purposes; and further, that if any taylor, or journeyman taylor, or other person brought up in, or professing, using, or exercising the art or mystery of a taylor, or journeyman taylor, within the limits aforesaid, shall, at any time or times after the first day of *May*, one thousand seven hundred and twenty one, keep up, continue, act in, make, enter into, sign, seal, or be knowingly interested or concerned in any contract, covenant, or agreement, by this act declared to be illegal, null, and void, every person or persons, so offending, being lawfully convicted thereof upon the oath or oaths of one or more credible witnesses or witnesses before any two justices of the peace in their jurisdictions within the limits aforesaid, upon any information exhibited, or prosecution, within three months after the offence committed, (which oaths the said justices are hereby impowered and required to administer) every such offender shall, by order of such justices, at their discretion, be committed, either to the house of correction, there to remain and be kept to hard labour for any time not exceeding two months, or to the common gaol, as they shall see cause, there to remain without bail or mainprize for any time not exceeding two months.

Servants (to Taylors.)

Secl. 2. “ And for declaring, limiting, and appointing the hours of work and wages for journeymen taylors, servants, and apprentices to taylors, within the limits aforesaid; Be it enacted by the authority aforesaid, That from and after the first day of *May*, one thousand seven hundred and twenty one, the hours of work for all journeymen taylors, servants, and apprentices to taylors, and other persons employed, or to be employed, or retained as taylors, in making up mens or women’s work, or such servants or apprentices within the cities of *London* and *Westminster*, or either of them, or within the weekly bills of mortality, shall be from six of the clock in the morning until eight of the clock at night; excepting only that there shall be allowed by the master one penny half-penny a day for breakfast, and one hour for dinner, in the time aforesaid; and for the said time or hours of work aforesaid there shall be paid unto every journeyman taylor, or other person employed, or to be employed or retained as a journeyman taylor, for his work, during the hours aforesaid, the wages and sums following, (that is to say) from the five and twentieth day of *March* to the four and twentieth day of *June*, any sum not exceeding two shillings *per diem*; and for the rest of the year one shilling and eight pence *per diem*.

Secl. 3. “ And be it further enacted by the authority aforesaid, That in case any taylor or taylors, or other person or persons acting as such, or carrying on, using, or exercising the art or mystery of a taylor within the limits aforesaid, shall hire, retain, or employ any journeyman or other person, not being an apprentice, he, she, or they, so hiring, retaining, or employing any such journeyman or other person aforesaid, (apprentices excepted) shall, and they are hereby obliged and required to pay them after the rate aforesaid, for the full time for which he, she, or they so hire, retain, or employ them, or agree so to do.

Secl. 4. “ And for more easy recovering the said wages, it shall be lawful for any two justices of the peace within the limits aforesaid, and they are hereby authorized and required, upon complaint made for that purpose, to summon before them the party or parties offending, and for non-payment of such wages, or sufficient satisfaction given for the same to the party or parties aggrieved, to issue their warrant or warrants for levying such wages due, as aforesaid, by distress and sale of the offender’s goods, rendring the overplus to the owner; and for want of sufficient distress to commit the party or parties offending to the common gaol, there to remain without bail or mainprize, until he, she, or they shall pay or give satisfaction to the party for the same.

Secl. 5. “ And in regard it may be reasonable upon some occasions, to alter the wages and hours of work aforesaid, Be it enacted by the authority aforesaid, That it shall and may be lawful to and for the justices of the peace in their respective jurisdictions within the limits aforesaid, at their general quarter-sessions, and they are hereby authorized and required, upon application to be made to them for that purpose, to take into their consideration the plenty or scarcity of the time, and other circumstances necessarily to be considered, and to alter the wages, and hours of work aforesaid,

aforesaid, and to order and appoint what wages and allowances shall be paid or made to journeymen taylors, and servants, retained or employed, or to be retained or employed, in the art or mystery of a taylor, as aforesaid, within the limits aforesaid, and what hours they shall work, and shall make such alterations therein, from time to time, as such justices at any such general sessions shall think fit, upon application to be made to them for that purpose, and such justices shall, within the space of fourteen days next after such general sessions, cause such rates and alterations, from time to time, to be printed, published, and made known, in such manner as to them shall seem meet, at the reasonable expence of any person or persons desiring the same; and from and after publication thereof, all taylors, and their journeymen, and servants, within the limits aforesaid, are hereby strictly required to observe the same, upon pain of imprisonment by such justices, for any time not exceeding two months, being lawfully convicted of such offence, after knowledge or information of any such rates or alterations thereof to be made, as aforesaid, upon any prosecution to be commenced within six days after the offence committed.

Seet. 6. “ And be it further enacted by the authority aforesaid, That if any person actually retained or employed as a journeyman taylor, or servant, in the art or mystery of a taylor, as aforesaid, within the limits aforesaid, shall, at any time or times after the first day of *May*, one thousand seven hundred and twenty-one, depart from his service before the end of the term or time for which he is or shall be hired or retained, or until the work, for which he was hired or retained, shall be finished, or not being retained or employed, shall refuse to enter into work or employment (after request made for that purpose by any master taylor, for the wages and hours limited, or to be limited and appointed, as aforesaid) unless it be for some reasonable or sufficient cause, to be allowed by two justices of the peace within the limits aforesaid; then in every such case every person, so offending, being thereof lawfully convicted, as aforesaid, shall be sent to the house of correction, there to be kept to hard labour for any time not exceeding two months.

Seet. 7. “ And for more effectual preventing the mischiefs and inconveniencies which may happen by non-observance of this act, or by seducing or inticing any of the journeymen taylors, or servants aforesaid, from one master to another; Be it enacted by the authority aforesaid, That if any taylor or other person professing, using, or exercising the art or mystery of a taylor, as aforesaid, within the limits aforesaid, or any other person aforesaid, shall, at any time after the first day of *May*, one thousand seven hundred and twenty-one, give, allow, or pay any more or greater wages than as aforesaid, for the hours of work aforesaid, to any servant or journeyman, in money, or otherwise, contrary to the intent of this act, every person, so offending, being thereof lawfully convicted upon any prosecution commenced within three months after the offence committed, shall forfeit and pay the sum of five pounds; one moiety whereof shall be to the informer or prosecutor, and the other moiety to the poor of the parish or place where the offence shall be committed; and every such ser-

Servants (to Taylors.)

vant or journeyman taking more or greater wages than as aforesaid, for the hours of work aforesaid, being thereof convicted, as aforesaid, shall be sent to the house of correction, there to be kept to hard labour for any time not exceeding two months; and all retainers, promises, obligations, or securities, for any wages, pay, or allowances, contrary to this act, shall be null and void.

Sec. 8. Provided, That this act or any thing therein contained, shall not extend to hinder the paying or receiving any more or other wages or allowances, which shall be agreed upon, for working before or after the hours of work, limited or appointed, or to be limited or appointed, as aforesaid.

Sec. 9. Provided also, That it shall and may be lawful for any person aggrieved by any order or orders to be made by any two or more justices of the peace, as aforesaid, to appeal to the justices of the peace assembled at the next general quarter-sessions to be holden for the city, division, parish, or place, where such order shall be made, giving six days notice of such appeal; and such justices in such general quarter-sessions, shall finally hear and determine the matter, and shall have power to award reasonable costs to either party, as to them shall seem just.

Sec. 10. Provided also, That any person convicted of any offence against this act, and who shall suffer for the same accordingly, shall not be otherwise punished, or suffer for such offence, by authority of any law now in force.

Servants

(to Watchmakers.)

STAT. 27 Geo. 2, c. 7. See this act under title **Clocks and Watches.**

Servants

(to Woollen Manufacturers.)

STAT. 1 Ann. st. 2 c. 18. [*A. D. 1701, intituled*] “An act for the more effectual preventing the abuses and frauds of persons employed in the working up the woollen, linen, fustian, cotton, and iron manufactures of this kingdom.”

“ Whereas many frauds are daily committed by persons employed in the working up of the woollen, linen, fustian, cotton, and iron manufactures within this kingdom, by imbezeling and purloining of the materials with which they are intrusted, to the great prejudice of trade and commerce: Be it therefore enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That from and after the twenty-fourth day of *June*, one thousand seven hundred and three, if any person or persons employed in the working up the woollen, linen, fustian, cotton, or iron manufactures within this kingdom, shall imbezil or purloin any wests, thrums, or ends of yarn, or any other materials of wool, hemp, flax, cotton, or iron, with which he, she, or they is or shall be intrusted to work upon, or shall reel short or false yarn, being thereof lawfully convicted by the oath of one or more credible witness or witnesses, or by the confession of the party or parties accused of the same, before one justice of the peace of the said county where such offence shall be committed, shall forfeit double the value of the damage done, for the use of the poor of the said parish: and in case the offender or offenders so convicted, as aforesaid, shall neglect or refuse to pay their forfeiture or forfeitures, as aforesaid, that then it shall and may be lawful for the said justice to cause the said offender to be committed to the house of correction, until satisfaction shall be made: and in case it shall appear unto the said justice, that the said offender is not able to make satisfaction, then the said offender shall be there publicly whipped, and kept to hard labour, for any time not exceeding fourteen days.

Penalty on persons employed in the woollen or linen manufactures, &c. and imbezeling the same.

Sett. 2. “ And be it further enacted by the authority aforesaid, That every person or persons buying or receiving any wests, thrums, or ends of yarn, or any other materials of wool, hemp, flax, cotton, or iron, and being thereof lawfully convicted, in manner as aforesaid, shall suffer the like penalties and forfeitures, as one convicted, pursuant to this act, for purloining and embeziling of the said materials.

The like on persons buying, &c. such goods imbezeled.

Sett. 3. And to prevent the oppression of the labourers and workmen employed in the woollen, linen, fustian, cotton, and iron manufacture, be it enacted by the authority aforesaid, That all payments and satisfactions hereafter to be made to any of the same labourers and workmen, for any work by them done in the same manufacture, shall be by the lawful coin of this realm, and not by any cloth, victuals, or commodities, in lieu thereof: and all wool delivered out to be wrought up, shall be so delivered, with declaration of the true weight thereof, on pain that every offender, in either of the said cases, shall forfeit and pay to such labourer or worker, double the value of what shall be due for such work by him, her, or them done; and if any such labourer or worker shall be guilty of any such fraud or default in the work by him, her, or them done, then such labourer or worker shall allow and answer to the owner of such work double the damages thereby sustained.

Labourers and workmen to be paid in money.

All wool to be wrought shall be delivered out by weight.

Penalty.

Sett.

How wages, *Sect.* 4. " And be it further enacted by the authority aforesaid, That frauds, &c. of all wages, demands, frauds, and defaults of labourers in the woollen, linen, fustain, cotton, and iron manufactures, for or concerning any work done in the same manufactures, shall and may be heard and determined by any two justices of the peace of the county, riding, division, city, or town corporate, where the matter in controversy ariseth, who are hereby impowered to summon and examine witnesses on oath concerning the same: but in case any person shall think himself aggrieved by any judgment or order of the said justices, it shall and may be lawful for such person to appeal against the judgment and order of the said two justices, to the justices of the peace in the general quarter sessions of the peace, which shall be held for the same county, riding, division, city, or town corporate, next after notice of such order of the said two justices; and the justices of the peace in the said general quarter sessions, are hereby impowered to summon and examine witnesses on oath, and to hear and finally determine the matter of the said appeal; and in case the same justices, in the said general quarter sessions, shall give judgment against such appellant, then the same justices shall award and order to the party, on whose behalf the same appeal is determined, such reasonable costs and charges to be paid by such appellant, in regard of such appeal, as to the same justices shall seem meet.

Party aggrieved may appeal.

Act to continue for 3 years.

Sect. 5. " Provided also and be it further enacted, That this act shall continue for the space of three years, to be commenced from the said twenty-fourth day of *June*, one thousand seven hundred and three, and from thence to the end of the next session of parliament, and no longer.

Made perpetual by 9 Annæ, cap. 30.

STAT. 12 *Geo.* 1, c. 34. See this act under this title, division (clothiers.)

STAT. 13 *Geo.* 2, c. 8. See this act under this title, section (leathern manufactures.)

Sessions.

SESSIONS of the peace is a court of record, held before two or more justices of the peace (*quorum unus*) for the execution of the authority given them by their commission, and certain acts of parliament. And the justices in sessions have power to hear and determine trespasses against the public peace, &c. and many offences by statute. This court is held four times in a year at some place within the county, &c. Also, besides the general sessions of the peace, there are private sessions held by the justices, for executing divers branches of the business of their offices. *Dalt. Just.* 753. See 19 *Vin. Abr.* 339-358.

Mr.

Mr. *Lambard*, says Mr. Serjeant *Hawkins*, seems to make no distinction between *general*, and *quarter-sessions*, but to take them as synonymous terms. But it seems the better opinion, that quarter-sessions are a species only of general sessions, and that such sessions only are properly called general quarter-sessions, which are holden in the four quarters of the year, in pursuance of the statute of 2 *Hen. 5*, and that any other sessions holden at any other time for the general execution of the authority of justices of peace, which by the abovementioned statute, justices of the peace are authorized to hold oftener than at the times therein specified, if need be, may be properly called general sessions, and that those holden on a special occasion for the execution of some particular branch of their authority, may properly be called *special sessions*. 2 *Hawk. P. C.* 42.

By stat. 12 *Ric. 2*, Sessions shall be kept in every quarter of the year at least. See this act at large under title **Justices of the Peace**.

STAT. 14 *Ric. 2*, c. 11. See this act under **Justices of the Peace**.

STAT. 2 *Hen. 5*, c. 4. [*A. D.* 1414, intituled] "What justices of peace must be resident in the same shire; and at what times they must hold their quarter-sessions."

Sec. 2. "And that the justices of the peace in every shire named of the *quorum*, be resident within the same shire, except lords named in the commission of the peace; and also except justices of the one bench, and of the other, the chief baron of the exchequer, serjeants at the law, and the king's attorney, for the time that the same justices, chief baron, serjeants at the law, and the king's attorney, be intending and occupied in the king's courts, or otherwise in some other place occupied in the king's service; (2) and make their sessions four times by the year; that is to say, in the first week after the feast of Saint *Michael*, and in the first week after the *Epiphany*, and in the first week after the clause of *Easter*, and in the first week after the translation of Saint *Thomas* the martyr, and more often, if need be; (3) and that the same justices hold their sessions throughout the realm of *England* in the same weeks every year from henceforth."

What justices of peace and *quorum* must be resident in the same shire, what not.

At what times justices of the peace shall hold their quarter sessions.

36 Ed. 3, c. 12.

12 R. 2, c. 10.

Twice in the year sufficient in Middlesex by 14 H. 6, c. 4.

STAT. 14 *Hen. 6*, c. 4. [*A. D.* 1435, intituled] "The justices of the peace of *Middlesex* shall keep their sessions but twice in the year."

"*Item*, Whereas it was ordained by a statute, That the justices of peace of all the counties of *England*, for the time being, shall sit and hold their sessions four times by the year, to inquire and execute all charges contained in their commission, which they be sworn to do according to the form of the said statute, upon a great pain, as by the same statute more fully appeareth: (2) Our lord the king, considering that all the high courts to be set and holden in the county of *Middlesex*, continually during all the four times of the term, by which time of term the commons inhabiting in and of the same county must attend from time to time to inquire of

2 H. 5, c. 4.

of all the articles to the said courts belonging, as reason and law requireth, and that presently after every of the said terms ended, the said justices of the said county do sit and hold their sessions in the same county, as they ought to do, by force of the said statute, more to avoid the said penalty, than for any other necessary thing there to be inquired, at which sessions they cause to come before them a great part of the inhabitants and commons of the said county of *Middlesex*, to inquire of all manner of things as to them is given in charge; and by that means they be charged and vexed throughout all the year, as well out of the time of term, as in time of term, so that they have no rest, nor time to do their husbandry, and their labour, to get their living in any wise, to their utter undoing if they be not relieved in this behalf. (3) Therefore the same our lord the king, willing in this case to provide for them a remedy, hath ordained, by the advice and assent aforesaid, and at the request of the said commons of the realm, that the justices of the peace which now be, and all other hereafter for the time being, in the said county of *Middlesex*, shall be clearly discharged of the said penalty, by authority of the same parliament, from henceforth, the court of the king's bench being set in the said county of *Middlesex*.

Saving to inquire of riots or forcible entries.

(4) Provided always, that the said justices of peace of the said county of *Middlesex*, for the time being, keep, observe, and execute the court of the sessions of the peace, two times in the year at the least, and more often, if need be, for any riot, or forcible entry made within the same county of *Middlesex*, and that upon the pain and forfeiture of such sums as be for that ordained by any law made before this time, to the end and intent that the said commons and inhabitants of the said county of *Middlesex* be not enforced nor compelled to appear before the justices of peace of the same county for the time being, but at such time which shall seem by the discretions of the same justices of peace necessary and behooful.

By stat. 25 *Car* 2, c. 2, Oaths to qualify for offices must be taken between the hours of nine and twelve in the forenoon. See title **Oaths**.

By stat. 5 *Geo*. 2, c. 19, Justices may rectify defects of form on appeals. See this act at large under **Certiorari**.

By stat. 22 *Geo*. 2, c. 46, No person shall act as solicitor at the sessions, unless admitted an attorney, on pain of 50*l*. See this act at large under **Attorney**.

Sewers.

SEWER is a passage or gutter to carry water into the sea, or a river: and commissioners of sewers are such as, by authority under the great seal, see drains and ditches well kept and maintained in marshy and fenny countries

countries, for the better conveyance of the water into the sea, and preserving grafs upon the land for the feeding of cattle. See stat. 15 *Car.* 2, c. 17, and 17 *Car.* 2, c. 11, touching the draining the great level in the fens called *Bedford Level*, and the authority of the governor, bailiff &c. as *Commissioners of Sewers*. Cowell, edit. 1727.

By stat. 23 *Hen.* 8, c. 5, Commissions of sewers shall be issued, in all parts of the realm where need shall require.

STAT. 13 *Eliz.* c. 9. [*A. D.* 1571, intituled] "An act for the commission of sewers."

Sett. 2. "And be it further enacted by the authority aforesaid, That The commif-
at all times from and after the end and expiration of the term of ten years sioners of sew-
next ensuing the date or *teste* of any commission of sewers hereafter to be ers orders
made, all such laws, ordinances and constitutions as were made by virtue shall continue,
of any such commission, and written in parchment indented and sealed, as tho' the com-
mission do
is above-mentioned, without certificate thereof, or the assent royal to the expire.
same had, as is aforesaid, shall, notwithstanding the determination of any
such commission by the expiration of the term of ten years next ensuing
the date of any such commission of sewers, likewise continue in force for
and by the space of one whole year then next ensuing: (2) and that the The justices
justices of peace in the shire and shires where the same laws, ordinances of peace may
and constitutions are to be executed within their several commissions or li- for one year
mits, or six of them, whereof two to be of the *quorum*, shall have power execute the
and authority, by the space of one whole year next after the expiration of commission of
sewers unless
every such commission, to execute the same laws, ordinances and consti- a new com-
mission be
tutions, and every of them, as fully, and in as ample manner and form granted.
as the commissioners, or any of them named and appointed in every or
any commission so expired, might or should have done, to all intents and
purposes, as if the said commission or commissions had continued in force."

The commissioners shall be resident in the county, 25 *Hen.* 8, c. 10.
Power of taxing the king's lands, 3 & 4 *Ed.* 6, c. 8.

The commissioners in *Glamorganshire* have power to prevent damage by sand arising from the sea, 1 *Ma. St.* 3, c. 11.

Water-courses within two miles of *London* falling into the *Thames*, shall be subject to the commission of sewers, 3 *Jac.* 1, c. 14, 2 *Will. & Ma. St.* 2, c. 8, *sett.* 14.

For draining of *Sedgmore*, 10 & 11 *Will.* 3, c. 26.

The common-council of *London* authorized to appoint commissioners of sewers, 19 *Car.* 2, c. 3. 22 & 23 *Car.* 2, c. 17. 7 *Ann.* c. 9.

The commissioners impowered to decree copyholds from the owners for the taxes, and to distrain goods, 7 *Ann.* c. 10, *sett.* 3. See 19 *Vin. Abr.* tit. *Sewers*.

Sheep.

STAT. 25 Hen. 8, c. 12. [A. D. 1533, intituled] "Concerning the number of sheep one should keep."

SECT. 1. "Forasmuch as divers and sundry of the king's subjects of this realm, now of late within few years, have daily studied, practised and invented ways and means how they might accumulate and gather together into a few hands, as well great multitudes of farms, as great plenty of cattle, and especially sheep, putting such land as they can get to pasture, and not to tillage; for preventing which, and for the encouragement of tillage, it is enacted, That no person shall have above two thousand sheep at one time, at six score to the hundred, except it be upon his own inheritance only, and except only what are necessary for his household, on pain of forfeiting three shillings and four-pence for every sheep above that number, half to the king, and half to him that will sue.

SECT. 2. "Provided that lambs shall not be accounted of the number, so long as they be under the age of a year.

SECT. 3. Provided also that if any person shall have more sheep than as aforesaid, by reason of his being executor or administrator, he shall sell off, within a year, till he have but two thousand.

SECT. 4. "But sheep bequeathed to a child within age, shall not be reckoned in the number.

SECT. 5. "The justices of peace shall have power to inquire of the offenders, as well by the oaths of twelve men as by information, and to make such process upon every presentment or information concerning this act, as upon presentments of trespass; and no person convicted by this act, shall be put to any less fine than after the rates before limited.

SECT. 14. "And no person shall take above two farms with houses thereon; nor shall any person have two, except he dwell in the parish where they both are, on pain of three shillings and four-pence a week in like manner."

STAT. 8 Eliz. c. 3. [A. D. 1565, intituled] "An act against carrying over sea, rams, lambs or sheep alive."

Penalty for
conveying of
any sheep
alive out of
this realm.
3 Inst. 104.

"For sundry good causes and considerations moved in this high court of parliament, be it enacted by the authority of the same, That no manner of person or persons, of what estate, degree, or condition soever he or they be, shall after the last day of *February* next ensuing, bring, deliver, send, receive, or take, or procure to be brought, delivered, sent, or received

into

into any ship or bottom, any rams, sheep, or lambs, or any manner of other kind of sheep, being alive, to be carried and conveyed out of this realm of *England, Wales* or *Ireland*, or out of any of the queen's highness dominions; (2) upon the pain that every such person or persons, their aiders, abettors, procurers and comforters, shall for his or their first offence or offences, so done contrary to the true meaning of this estatute, forfeit and lose all his goods for ever; whereof the one moiety shall be to the queen's majesty, her heirs and successors, the other moiety to him or them that will sue for the same in any court of record, wherein no essoin, protection, nor wager of law for the defendant shall be admitted or allowed.

Sett. 2. "And further, every such offender or offenders shall suffer imprisonment by the space of one whole year, without bail and mainprize, and at the year's end, shall in some open market-town, in the fullness of the market, on the market-day, have his left hand cut off, and that to be nailed up, in the openest place of such market: (2) and that every person or persons estoons offending against this statute, shall be adjudged a felon, and shall suffer death as in cases of felony. 3 Inst. 46.

Sett. 3. "Provided always, That this act shall not extend to any corruption of blood, or be prejudicial or hurtful to any woman claiming dower by or from any such offender or offenders; any thing in this act to the contrary notwithstanding. No corruption of blood, or forfeiture of dower.

Sett. 4. "And be it further enacted by the authority aforesaid, That the justices of *Oyer and Terminer*, justices of gaol-delivery, and justices of peace in every county and shire within this realm of *England* and *Wales*, and other the queen's majesty's dominions, shall have full power and authority, by virtue of this act, to enquire of every offender and offenders contrary to the form and effect of this act, and to hear and determine every offence and offences, committed, perpetrated and done contrary to the form and effect of the same, according to the course of the laws of this realm. What justices may hear and determine the offences aforesaid. 3 H. 6, c. 2.

But the offender, says Lord Coke, may have his clergy, as well in the case of the cutting off his hand, as in the case of felony. 3 Inst. 104.

STAT. 12 Car. 2, c. 32. [A. D. 1660] made, among other purposes, "for prohibiting the exportation of wool."

"For the better preventing and avoiding of such losses and inconveniencies as have happened, and daily do and may happen to the kingdom of *England*, and dominion of *Wales*, and to the kingdom of *Ireland*, by and through the secret and subtil exportation and transportation, and by and through the secret and subtil carrying and conveying away of wool, wool-fells, mortlings, shorlings, yarn made of wool, wool-flocks, fullers-earth, and fulling-clay, out of, and from the kingdoms and dominion aforesaid, and for the better setting on work the poor people and inhabitants of the kingdoms and dominion aforesaid; (2) and to the intent that the full and best use and benefit of the principal native commodities of the

same kingdoms and dominion may come, redound, and be unto and amongst the subjects and inhabitants of the same, and not unto or amongst the subjects and inhabitants of the realm of *Scotland*, or of any foreign realms, or states, as the same now of late in some great measure hath done, and is further likely to do, if some severer punishment than heretofore be not speedily inflicted upon such offenders as shall be actors or assistants in and to such exportation and transportation, and in and to such

No person after the 14th of January, 1660, shall export any sheep or wool, wool-fells, mortlings, shorlings, yarn, wool-flocks, fullers-earth, fulling-clay,

carrying and conveying away thereof, as aforesaid; (3) be it enacted by the king's most excellent majesty, the lords and commons in this present parliament assembled, and by the authority of the same, That no person or persons whatsoever, from and after the fourteenth day of *January*, one thousand six hundred and threescore, shall directly or indirectly export, transport, carry or convey, or cause or procure to be exported, transported, carried or conveyed out of, or from the kingdom of *England*, or dominion of *Wales*, or town of *Berwick upon Tweed*, or out of, or from the isles of *Jersey* or *Guernsey*, with *Sarke* and *Alderney*, being under the government of *Guernsey* aforesaid, or out of, or from any of them, or out of, or from the kingdom of *Ireland* aforesaid, into any parts or places out of the kingdoms, isles or dominion aforesaid, any sheep or wool whatsoever, of the breed or growth of the kingdoms of *England* or *Ireland*, or isles; or dominion aforesaid; (4) or any wool-fells, mortlings or shorlings, or any yarn made of wool, or any wool-flocks, or any fullers-earth, or fulling-clay whatsoever; (5) nor shall directly or indirectly pack or load, or cause to be packed or loaded upon any horse, cart, or other carriage, or load or lay on board, or cause to be laden or laid on board in any ship or other vessel, in any place or port within the kingdom of *England* or *Ireland*, or town of *Berwick*, or isles, or dominion aforesaid, any such sheep, wool, wool-fells, mortlings, shorlings, yarn made of wool, or wool-flocks, or any fullers-earth, or fulling-clay, to the intent or purpose to export, transport, carry or convey the same, or to cause the same to be exported, transported, carried or conveyed out of the kingdoms of *England* or *Ireland*, town of *Berwick*, isles, or dominion aforesaid, or with intent or purpose, that any other person or persons should so export, transport, carry or convey the same into any parts or places out of the kingdoms of *England* and *Ireland*, town of *Berwick*, isles, or dominion aforesaid, into the kingdom of *Scotland*, or any foreign parts.

nor carry, load, or board, any sheep, wool, &c.

By stat. 22 & 23 *Car.* 2, c. 7, Cutting, maiming, wounding and killing of horses, sheep, and other cattle, is felony. See this act at large under **Burning**, page 478.

By stat. 14 *Geo.* 2, c. 6, Sheepstealing, or stealing any part of them, is made felony without benefit of clergy. See this act at large under **Cattle**.

Ships.

Ships.

STAT. 12 Ann. St. 2, c. 18. [*A. D. 1714, intituled*] “An act for the preserving all such ships, and goods thereof, which shall be forced on shore, or stranded upon the coasts of this kingdom, or any other of her majesty’s dominions.”

Secl. 5. “And it is hereby moreover enacted, That if any person or persons shall make, or be assisting in the making, any hole in the bottom, side, or any other part of any ship or vessel, so in distress, as aforesaid, or shall steal any pump belonging to any ship or vessel, so in distress, as aforesaid, or shall be aiding or abetting in the stealing such pump, as aforesaid, or shall wilfully do any thing tending to the immediate loss or destruction of such ship or vessel, such person or persons shall be and are hereby made guilty of felony, without any benefit of his, her, or their clergy.” Making holes in the ship, &c. felony.

STAT. 11 Geo. 1, c. 29. [*A. D. 1724*] made, among other purposes, “for explaining and amending a late act for more effectual punishment of such, as shall wilfully burn or destroy ships.”

Secl. 5. “And whereas, by an act made in the fourth year of his majesty’s reign, [*intituled, An act for enforcing and making perpetual an act of the twelfth year of her late majesty, intituled, An act for preserving all such ships, and goods thereof, which shall happen to be forced on shore or stranded on the coast of this kingdom, or any other of his majesty’s dominions, and for inflicting the punishment of death on such as shall wilfully burn or destroy ships,*] it is, amongst other things, enacted, That if any owner of, or captain, master, mariner, or other officer belonging to any ship, shall, after the twenty-fourth day of June, which shall be in the year of our Lord one thousand seven hundred and eighteen, wilfully cast away, burn, or otherwise destroy the ship, of which he is owner, or unto which he belongs, or in any manner or wise direct, or procure the same to be done, to the prejudice of any person or persons that shall underwrite any policy or policies of insurance thereon, or of any merchant or merchants, that shall load goods thereon, he shall suffer death.” Geo. 1, c. 12.

Secl. 5. “And whereas some doubts have arisen touching the nature of the offence provided against by the said recited act, and the trial and punishment to be had and inflicted for the same, be it therefore enacted and declared by the authority aforesaid, That if any owner of, or captain, master, officer, or mariner belonging to any ship or vessel, shall, after the destroying ships, four death.”

four and twentieth day of *June*, one thousand seven hundred and twenty-five, wilfully cast away, burn, or otherwise destroy the ship or vessel, of which he is owner, or to which he belongeth, or in any wise direct or procure the same to be done, with intent or design to prejudice any person or persons, that hath or shall underwrite any policy or policies of insurance thereon, or of any merchant or merchants, that shall load goods thereon, or of any owner or owners of such ship or vessel, the person or persons offending therein, being thereof lawfully convicted, shall be deemed and adjudged a felon or felons, and shall suffer, as in cases of felony, without benefit of clergy.

How these
offences are
to be tried.

23 H. 8, c.
15.

Sett. 7. "And be it further enacted by the authority aforesaid, That if any of the said offences, in wilfully casting away, burning, or otherwise destroying any ship or vessel, as aforesaid, shall be committed within the body of any county of this realm, the same shall and may be enquired of, tried, determined, and adjudged in the same courts, in such manner and form, as felonies done within the body of any county, by the laws of this realm, are to be enquired of, tried, determined, and adjudged; and if any of the said offences shall be committed upon the high seas, the same shall be enquired of, tried, determined, and adjudged before such court, and in such manner and form, as in and by an act made in the eight and twentieth year of the reign of king *Henry* the Eighth, [intituled, *For pirates,*] is directed and appointed for the enquiring, trying, determining, and adjudging of felonies done upon the high seas."

By stat. 24 *Geo.* 2, c. 45, Stealing goods from on shipboard is felony without benefit of clergy. See this act at large under **Larceny**, page 19.

Stat. 26 *Geo.* 2, c. 19. See this act under **Wreck**.

Silks.

BY stat. 13 & 14 *Car.* 2, c. 15, *sett.* 2, No person shall exercise the trade of a silk-thrower, unless he hath served seven years apprenticeship. See **Servants** (to Silkmasters.)

STAT. 9 & 10 *Will.* 3, c. 43. [*A. D.* 1698, intituled] "An act for the better encouragement of the royal lustring company, and the more effectual preventing the fraudulent importation of lutestrings and alamodes."

Sect. 1. "No foreign silks called alamodes or lutestrings, shall be imported but in the port of *London*, on notice first given to the commissioners of the customs, and licence had from them.

Sett.

Sect. 3. “ And if they be imported elsewhere, or without such notice or licence, and the duties paid, they shall be forfeited, or the value thereof, and be sold and exported again; and the offender so importing, and also the receiver, and person offering to sell the same, shall forfeit five hundred pounds.

Sect. 5. “ And if any person shall counterfeit the custom-house seal, or seal of the lutestring company, he shall forfeit five hundred pounds, and be set in the pillory two hours: and any person who shall buy or sell, or have in his custody any alamodes or lutestrings sealed or marked with a counterfeit seal or mark, shall forfeit the same and five hundred pounds: and any person authorized by writ of assistance under the seal of the exchequer, or with a constable or other public officer, inhabiting near the place, with a warrant from a justice of the peace, and in the day-time, may enter any house, shop, cellar, warehouse, or other place, to search for and seize any alamodes or lutestrings imported contrary to this act, or not sealed or marked, or marked with a counterfeit mark or seal, and in case of resistance may break open doors, chests, trunks, and package; and every justice shall grant such warrant to any creditable person, making oath that he hath reason to suspect or believe that there are some of the said silks so fraudulently imported, or not sealed and marked, or sealed or marked with a counterfeit seal or mark, in the place or places where he intends to search.

Sect. 6. “ And all officers belonging to the customs, sheriffs, mayors, bailiffs, constables and other officers, shall be aiding in the execution hereof.

Sect. 9. “ The said penalties shall be two thirds to the king, and one third to him that shall seize or sue in any court of record.”

By stat. 5 *Ann. c.* 20, *sect.* 5, None but custom-house officers, or persons deputed by the lutestring company, and having writs of assistance from the exchequer, shall seize lutestrings or alamodes within the bills of mortality.

STAT. 3 *Geo. 3, c.* 21. [*A. D.* 1763, *intituled*] “ An act for explaining, amending, and rendering more effectual, an act made in the nineteenth year of the reign of king *Henry* the seventh, intituled, “ *Silk works.*”

“ Whereas by an act passed in the nineteenth year of the reign of king *Henry* the seventh, intituled, “ *Silk works,*” it is, amongst other things, ordained and enacted, That no manner of person shall from thenceforth bring, or cause to be brought, into the realm of *England*, to be sold, any manner of silk wrought by itself, or with any other stuff, in any place out of the said realm, in ribbands, laces, or girdles, upon pain of forfeiture of all the said ribbands, laces, and girdles, and every of them, in whose hands soever they be found, or the values of the same, the one moiety to the king, and the other moiety unto any of the king’s subjects that would sue for the same: and whereas, notwithstanding the aforesaid act, and the other laws now in being, great quantities of foreign manufactures, and particularly

Preamble, re-
citing clause
in act 19
Hen. 7.

Foreign silk,
ribbands,
laces, or
girdles, im-
ported,

are forfeit-
able, and may
be seized by
any person;

and the im-
porter forfeits
also 100 l.

and all per-
sons assisting
therein, 50 l.
each;

and the vend-
ers, retailers,
and persons
concealing
the same, for-
feit, besides
the loss of the
goods, 50 l.

One moiety of
the said pe-
nalties to go
to the king,
and the other
to the prose-
cutor,
to be recover-
ed in any of
the courts at
Westminster.

ticularly ribbands, laces, and girdles, are brought into, and sold in this kingdom, to the great diminution of the trade and manufactures of this kingdom, and to the great prejudice, hindrance, and impoverishment, of great numbers of his majesty's subjects; an evil which, if not timely prevented, will affect and greatly lessen the public revenue, and greatly distress the silk trade and manufactures of this kingdom: for remedy whereof, be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That if any person or persons shall, after the twenty-fourth day of *June*, one thousand seven hundred and sixty-three, import, bring, or convey, or cause to be imported, brought, or conveyed, into this kingdom, any ribbands, laces, or girdles, not made and manufactured in *Great Britain*, whether the same be wrought of silk alone, or wrought of silk mixed with any other materials; all such ribbands, laces, and girdles, shall be, and the same are hereby declared to be forfeited; and the same shall and may be seized and detained by any person or persons whatsoever, in whatever importers, venders, or retailers hands the same may be found or discovered; and shall be disposed of as herein after is mentioned; and the person or persons bringing, conveying or importing such ribbands, laces, or girdles, into this kingdom, or causing the same to be so brought, conveyed, or imported, shall also forfeit, for every offence, the sum of one hundred pounds; and all and every person and persons who shall be aiding, abetting, or assisting in the bringing and conveying or importing into this kingdom, any such ribbands, laces, or girdles, as aforesaid, shall severally forfeit and pay the sum of fifty pounds, over and above any interest which he, she, or they may have, or may have had, in any such ribbands, laces, or girdles.

Sect. 2. " And be it further enacted by the authority aforesaid, That all and every person and persons, being a vender or venders, retailer or retailers, of any kind of ribbands, laces, or girdles, respectively, in whose custody or possession any such ribbands, laces, or girdles, or any of them, shall be found, or who shall sell or expose to sale, any such ribband, laces, or girdles, as aforesaid, or who shall conceal any such ribbands, laces, or girdles, with intent to prevent the forfeiture or seizure of the same, shall, over and above the forfeiture and loss of such ribbands, laces, and girdles, and all interest which he, she, or they, may have therein, for every such offence, forfeit and pay the sum of fifty pounds.

Sect. 3. " And be it further enacted by the authority aforesaid, That all pecuniary forfeitures and penalties incurred under this act, shall be paid, one moiety to our sovereign lord the king, his heirs, and successors, and the other moiety to him or them who will sue or prosecute for the same respectively; such of the said penalties which shall arise in that part of *Great Britain* called *England*, to be sued and prosecuted for in any of his majesty's courts of record at *Westminster*, by action of debt, bill, plaint, or information, in which no essoin, protection, or wager of law, or more than one imparlance, shall be allowed; and such of them as shall arise in

that part of *Great Britain* called *Scotland*, to be sued and prosecuted for in or exchequer the court of *Exchequer* at *Edinburgh*, in such manner as any penalties and forfeitures for offences against the laws touching the customs may be sued or prosecuted for there respectively.

Sec. 4. " Provided always, and be it also further enacted by the au- Where the
thority aforesaid, That whenever such ribbands, laces, and girdles, shall value of the
be found and seized in that part of *Great Britain* called *England*, and out goods so seiz-
of the cities of *London* and *Westminster*, and the limits of the weekly bills ed out of Lon-
of mortality, and the same shall not exceed in value the sum of twenty minster, do
pounds, it shall and may be lawful for two or more of his majesty's jus- not exceed
tices of the peace for such county, city, borough, or place, where the 20l.
same shall be so found and seized, upon any information before them, two justices
that such ribbands, laces, or girdles, were seized as ribbands, laces, or may proceed
girdles, unduly brought into, and not manufactured within, this king- to condemna-
dom, to hear and determine the same, and to proceed to condemnation of, charge there-
or discharge thereof, as shall seem just; any thing herein before contained of.
to the contrary notwithstanding.

Sec. 5. " And, for the utter prevention of all and every such rib-
bands, laces, and girdles, seized and condemned as aforesaid, from ever
being made use of to the prejudice of the trade and manufactures of
this kingdom, be it further enacted by the authority aforesaid, That all After con-
and every such ribbands, laces, and girdles, after condemnation thereof, demnation
shall, by order of the court, judge or judges, or justices, where or before the goods to
whom such condemnation shall be had, be publicly burnt and entirely be burnt,
destroyed; but the execution of such order shall, and may be suspended suspending
for so long time only as may be thought just and meet, for the better the execution
attaining the ends of justice, with regard to any suit or prosecution had, thereof only
to be had, for the recovery of any pecuniary penalty or penalties by this till prosecu-
act inflicted. tion of the
penalties.

Sec. 6. " Provided always, and it is hereby further enacted by the au- The goods,
thority aforesaid, That forthwith, after the seizure of any such ribbands, after seizure,
laces, or girdles, as aforesaid, the same, until they shall be condemned, to be deposit-
burnt, and destroyed, as aforesaid, or discharged as unduly seized, shall ed, till con-
be deposited in one of the king's ware-houses belonging to the custom- demnation, or
house, in case such seizure happens to be within the cities of *London* or discharge, in
Westminster, or the weekly bills of mortality, where the same shall be re- the king's
ceived and admitted at all times by the proper officer or officers there, ware-houses,
who is and are hereby impowered and required to receive and preserve if the seizure
the same until they shall be condemned, burnt, and destroyed, or discharged be made with-
as aforesaid; and in case such seizure shall be made out of the said cities in the bills of
of *London* and *Westminster*, and the weekly bills of mortality, then in the mortality;
same shall be deposited in the hands of the chief magistrate of such if elsewhere,
city, town, or place, where the same shall be seized, or in the hands then in the
of the constable of the next adjacent village, who is and are hereby im- hand of the
powered and required to receive and preserve the same, until they shall chief magi-
condemned, burnt, and destroyed, or discharged as aforesaid; and all strate,
and every such ribbands, laces, and girdles, may, from time to time be or constable;
viewed, be and to be free
to inspection,
with leave of
court, &c.

viewed and inspected by any person or persons, on behalf of the prosecutor or prosecutors, or of the person or persons interested in, or claiming, the said ribbands, laces, and girdles, with the leave of the court, officers, judges, or justices, where or before whom any prosecution or suit shall be carried on for condemnation thereof, or for recovery of any penalty by this act inflicted, who are and is hereby required to make and give such order, from time to time, for that purpose, as may be just and reasonable.

Upon information given in upon oath before a justice, search warrants may be granted; *Secl. 7.* " And, for the better discovering and detecting any offender or offenders against this act, be it enacted by the authority aforesaid, That upon an information in writing made upon oath before any two or more of his majesty's justices of the peace for the respective county, or place (which information shall be signed by the party or parties making the same) that there is good ground and reason to suspect that such ribbands, laces, or girdles, as aforesaid, have been imported into this kingdom, and are concealed by, or are in the possession or custody of any retailer or seller of any kind of ribbands, laces, or girdles, contrary to the true intent of this act, it shall and may be lawful for such justices respectively, to issue their warrant or warrants to any constable or constables, or other peace officer or officers, within the said county or place, empowering him or them to search, in the day-time, the house or houses, out-house or out-houses, ware-houses, shops, cellars, rooms, and other places, belonging to, or hired, employed, or made use of, by such retailer or seller who shall be suspected to conceal or have in his, her or their possession or custody, any ribbands, laces, or girdles, not made or manufactured within *Great Britain*; and if any ribbands, laces, or girdles, not being made or manufactured within *Great Britain*, shall be found, to seize and carry away the same, for the purpose of carrying this act into execution, and to dispose thereof as is herein before directed.

and seizure made of such goods as shall thereupon be found, *General issue.* *Secl. 8.* " And be it further enacted by the authority aforesaid, That if any action or suit shall be commenced against any person or persons for any thing done in pursuance of this act, the defendant or defendants in such action or suit, may plead the general issue, and give this act, and the special matter, in evidence, at any trial to be had thereupon, and that the same was done by the authority of this act; and if it shall appear to have been so done, then the jury shall find for the defendant or defendants; and if the plaintiff shall be nonsuited, or discontinue his action, after the defendant or defendants shall have appeared; or if judgment shall be given upon any verdict or demurrer against the plaintiff, the defendant or defendants shall recover treble costs, and have the like remedy for the same, as defendants have in other cases by law.

Treble costs. *Secl. 9.* " Provided always nevertheless, and it is hereby enacted, That in every such action, it shall and may be lawful for the defendant or defendants, by leave of the court where such action shall be depending, at any time before issue joined, to pay into court such sum of money as he or they shall see fit, as amends for the matter or cause complained of in such action; whereupon such proceedings, orders, and judgments, shall

Defendant, with leave, may pay money into court. and

and may be had, made, and given, in and by such court, as in other actions where the defendant is allowed to pay money into court.

Secl. 10. “ And be it further enacted by the authority aforesaid, That if any ribbands, laces, or girdles, wrought of silk alone, or of silk mixed with any other materials, shall be seized by virtue and in pursuance of this act, and if any doubt or question shall afterwards arise, where the said ribbands, laces, or girdles, so wrought as aforesaid, were manufactured, the proof shall lie upon such person or persons, being a vender or venders, retailer or retailers, of any kind of ribbands, laces, or girdles, respectively, in whose custody or possession the same were found, and not upon the prosecutor or prosecutors, plaintiff or plaintiffs; and in case no such proof shall be given, that such ribbands, laces, and girdles, were manufactured within *Great Britain*, then the same shall, without any further proceeding, be taken and held to have been manufactured out of *Great Britain*, and contrary to, and in violation of, this act; any law or custom to the contrary notwithstanding.

Secl. 11. “ Provided always, and it is hereby declared, That if any such person or persons, in whose custody or possession any such ribbands, laces, or girdles, as aforesaid, shall be seized by virtue and in pursuance of this act (such person or persons not importing or concealing the same) shall discover, upon oath, before any one or more justice or justices of the peace, the person or persons who sold such ribbands, laces, or girdles, to such person or persons, in whose custody or possession the same shall be seized, so as that such person or persons so selling the same shall or may be prosecuted and convicted according to the intent of this act, as the seller thereof, in case the same shall be, or be taken and held to be, within the intent and meaning of this act, manufactured out of *Great Britain*; such person or persons so discovering as aforesaid, shall be, and is and are hereby freed and discharged of and from all and every penalties and forfeitures by this act inflicted, upon all and every person and persons being a vender or venders, a retailer or retailers, having in their custody or possession, any such ribbands, laces, or girdles, as aforesaid, not made or manufactured in *Great Britain*, and of and from any proof that such ribbands, laces, or girdles, so seized as aforesaid, are manufactured in *Great Britain*.

Secl. 12. “ Provided also, and it is hereby further enacted by the authority aforesaid, That nothing in this act contained, shall extend, or be in any wise construed to extend, to subject any person or persons whatsoever, who shall wear or make use of such ribbands, laces, or girdles, as aforesaid, as part of his, her, or their apparel or dress only, to any forfeiture, or to any pecuniary penalty or penalties inflicted by this act, or to any proof that such ribbands, laces, or girdles, are manufactured within *Great Britain*.

STAT. 5 Geo. 3, c. 48. [A.D. 1765, intituled] “ An act for prohibiting the importation of foreign manufactured silk stockings, silk mitts, and silk gloves, into *Great Britain* and the *British* dominions; and for render-

ing more effectual an act passed in the third year of the reign of his present majesty, for explaining, amending, and rendering more effectual, an act made in the nineteenth year of the reign of king *Henry* the seventh, intituled, *Silk-Works*."

Preamble. "Whereas the importation of foreign manufactured silk stockings, silk mitts, and silk gloves, into *Great Britain*, and the *British* dominions, is greatly prejudicial to the trade and manufactures of this kingdom, and tends to the depriving of his majesty's subjects of the means of supporting themselves and their families; for remedy whereof, may it please your majesty that it may be enacted; and be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled and by the authority of the same, That if any foreign manufactured silk stockings, silk mitts, or silk gloves, shall from and after the twenty-fourth day of *June*, one thousand seven hundred and sixty-five, be imported, brought, or conveyed, into this kingdom, or any part of the *British* dominions, the same shall be, and are hereby declared to be, forfeited, and shall be liable to be searched for and seized, in like manner as other prohibited and uncustomed goods are, and shall be disposed of as is herein after mentioned; and every person or persons who shall bring, convey, or import, or shall cause to be brought, conveyed, or imported, into this kingdom, or any part of the *British* dominions, any such silk stockings, silk mitts, or silk gloves, or shall be aiding, abetting, or assisting therein, or being a vender or venders, retailer or retailers, of any kind of silk stockings, mitts, or gloves, in whose custody or possession any such foreign manufactured silk stockings, silk mitts, or silk gloves, shall be found, or who shall sell, or expose to sale, any such silk stockings, silk mitts, or silk gloves, or who shall conceal any such silk stockings, silk mitts, or silk gloves, with intent to prevent the forfeiture or seizure of the same, shall, over and above the forfeiture and loss of such silk stockings, silk mitts, and silk gloves, and all interest which he, she, or they, may have therein, for every such offence, forfeit and pay the sum of two hundred pounds, together with costs of suit.

Foreign manufactured silk stockings, silk mitts, or silk gloves, are prohibited to be imported after 24 June, 1765, on penalty of forfeiture,

and the persons assisting therein, or dealers in whose custody such goods shall be found or exposing them to sale, &c.

forfeit also 200l.

Where such goods shall be found, and seized out of London, or weekly bills not exceeding 20l. in value; two justices for the county or place may proceed to condemnation or discharge thereof.

SecT. 2. "Provided always, and be it further enacted by the authority aforesaid, That if any such silk stockings, silk mitts, or silk gloves, shall be found and seized in that part of *Great Britain* called *England*, out of the cities of *London*, and *Westminster*, and the limits of the weekly bills of mortality, and the same shall not exceed in value the sum of twenty pounds; it shall and may be lawful for two or more of his majesty's justices of the peace for such county, city, borough, or place, where the same shall be so found and seized, upon information before them that such silk stockings, silk mitts, or silk gloves, were seized as silk stockings, silk mitts, or silk gloves, unduly brought into, and not manufactured within this kingdom, to hear and determine the same, and to proceed to condemnation or discharge thereof, as shall seem just, any thing herein before contained to the contrary notwithstanding.

SecT.

Sec. 3. " And be it further enacted by the authority aforesaid, That Seizures, if
 forthwith after the seizure of any such silk stockings, silk mitts, or silk made within
 gloves, as aforesaid, the same shall be deposited in one of the king's London or
 warehouses belonging to the custom-house, in case such seizure happens Westminster,
 to be within the cities of *London*, or *Westminster*, or the weekly bills of or weekly bills
 mortality, where the same shall be received and admitted at all times by to be deposit-
 the proper officer or officers there, who is and are hereby impowered and ed in the
 required to receive and preserve the same; and in case such seizure shall king's ware-
 be made out of the said cities of *London*, and *Westminster*, and the weekly house's; if
 bills of mortality, then the same shall be deposited in the hands of the made else-
 chief magistrate of such city, town, or place where the same shall be seized, where, to be
 or in the hands of the constable of the next adjacent village, who is and deposited with
 are impowered and required to receive and preserve the same; and all the chief ma-
 every such silk stockings, silk mitts, and silk gloves, may, from time to gistrate, or
 time, be viewed and inspected by any person or persons, on behalf of the constable,
 prosecutor or prosecutors, or of the person or persons interested in and to be
 claiming the said silk stockings, silk mitts, and silk gloves, with the viewed with
 leave of the court, officers, judges, or justices, where, or before whom leave;
 any prosecution or suit shall be carried on, for condemnation thereof, or
 for recovery of any penalty by this act inflicted, who are and is hereby
 required to make and give such orders, from time to time for that pur-
 pose, as may be just and reasonable; and after condemnation thereof in and after con-
 due course of law, all and every such silk stockings, silk mitts, and silk demnation, to
 gloves, shall be publickly sold to the best advantage for exportation by be publickly
 the candle; and one moiety of the produce, or money arising by the fold for ex-
 sale of such silk stockings, silk mitts, and silk gloves, shall be to the use portation to
 of his majesty, his heirs, and successors; and the other moiety thereof to foreign parts,
 the use of the officer or officers who shall seize and secure the same; and not being any
 no such silk stockings, silk mitts, or silk gloves, shall be consumed or of his majes-
 used in this kingdom, but shall be exported again to some port or place, ty's domini-
 not being any part of his majesty's dominions, and shall not be sold other- ons;
 wise than on condition to be exported as aforesaid; and such silk stockings, for which se-
 silk mitts, and silk gloves, shall not be delivered out of the warehouse or curity is to be
 place wherein the same shall have been secured, until sufficient security given,
 be first given to the king's majesty, his heirs, and successors, which the
 commissioners of his majesty's customs are hereby impowered and re-
 quired to take, that the same, and every part thereof, shall be exported
 as aforesaid, and not landed again in any part of his majesty's dominions;
 which securities shall be discharged without fee or reward, upon certificate to be dischar-
 returned under the common seal of the chief magistrate in any place or ged upon cer-
 places beyond the seas, and out of his majesty's dominions, or under the tificate of the
 hands and seals of two known *English* merchants upon such place, that due landing
 the goods were there landed; or upon proof by credible persons, that thereof,
 such goods were taken by enemies, or perished in the seas; the examina- or proof made
 tion and proof thereof being left to the judgement of the said commis- of their being
 sioners; which commissioners are hereby impowered, from time to time taken by the
 to call upon the person or persons who have entered into such security, enemy, or
 to produce such certificate or proof as aforesaid, that they pe-
 rished at sea.

Where there shall be grounds for suspicion, and information upon oath be made and subscribed before a justice, of any such goods being imported and concealed by the retailer, he is to issue his warrant for searching for and seizing the same.

Sett. 4. “ And for the better discovering and detecting any offender or offenders against this act; be it enacted by the authority aforesaid, That upon an information in writing, made upon oath before any two or more of his majesty’s justices of the peace for the respective county or place (which information shall be signed by the party or parties making the same) that there is good ground and reason to suspect that such silk stockings, silk mitts, or silk gloves as aforesaid, have been imported into this kingdom, and are concealed by, or are in the possession or custody of, any retailer or seller of any kind of silk stockings, silk mitts, or silk gloves, contrary to the true intent of this act; it shall and may be lawful for such justices respectively, to issue their warrant or warrants to any constable or constables, or other peace officer or officers, within the said county or place, empowering him or them to search in the day-time the house or houses, out-house, or out-houses, ware-houses, shops, cellars, rooms, and other places, belonging to, or hired, employed, or made use of by, such retailer or seller who shall be suspected to conceal or have in his, her, or their possession or custody any silk stockings, silk mitts, or silk gloves, not being made or manufactured within *Great Britain*; and if any such silk stockings, silk mitts, or silk gloves, not being made or manufactured within *Great Britain*, shall be found, to seize and carry away the same, for the purpose of carrying this act into execution, and to dispose thereof as is herein before directed.

General issue. *Sett. 5.* “ And be it further enacted by the authority aforesaid, That if any action or suit shall be commenced against any person or persons, for any thing done in pursuance of this act, the defendant or defendants in such action or suit may plead the general issue, and give this act and the special matter, in evidence, at any trial to be had thereupon, and that the same was done by the authority of this act; and if it shall appear to have been so done, then the jury shall find for the defendant or defendants; and if the plaintiff shall be nonsuited, or discontinue his action after the defendant or defendants shall have appeared; or if judgement shall be given upon any verdict or demurrer against the plaintiff, the defendant or defendants shall recover treble costs, and have the like remedy for the same as defendants have in other cases by law.

Treble costs.
Defendant allowed to pay money into court.

Sett. 6. “ Provided always, and be it further enacted, That in every such action, it shall and may be lawful for the defendant or defendants, by leave of the court where such action shall be depending, at any time before issue joined, to pay into court such sum of money as he or they shall see fit, as amends for the matter or cause complained of in such action; whereupon such proceedings, orders, and judgments, shall and may be had, made, and given, in and by such court, as in other actions where the defendant is allowed to pay money into court.

If any doubt arise with respect to the place of manufacture of such goods,

Sett. 7. “ And be it further enacted by the authority aforesaid, That if any such silk stockings, silk mitts, or silk gloves, shall be seized by virtue and in pursuance of this act, and any doubt or question shall afterwards arise where the same were manufactured, the proof shall lie upon the person or persons in whose custody or possession the same were found, and

not

not upon the prosecutor or prosecutors, plaintiff or plaintiffs; and in case proof to lie on no proof shall be given that such silk stockings, silk mitts, or silk gloves, ^{the defendant.} were manufactured within *Great Britain*, then the same shall, without any farther proceeding, be taken and held to have been manufactured out of *Great Britain*, and contrary to, and in violation of, this act; any law or custom to the contrary notwithstanding.

Señ. 8. " Provided always, and be it further enacted, That if any per- Person in
son or persons in whose custody or possession any such silk stockings, silk ^{whose custody}
mitts, or silk gloves, shall be seized, by virtue and in pursuance of this ^{such goods}
act, such person or persons not importing or concealing the same, shall ^{shall be}
discover upon oath, before any one or more justice or justices of the ^{found, not}
peace, the person or persons who sold such silk stockings, silk mitts, or ^{importing or}
silk gloves to such person or persons in whose custody or possession the ^{concealing}
same shall be seized, so as that such person or persons, so selling the same, ^{the same,}
shall or may be prosecuted and convicted according to the intent of this ^{discovering}
act, as the seller thereof, in case the same shall be, or be taken and held ^{the seller,}
to be, within the intent and meaning of this act, manufactured out of
Great Britain; such person or persons so discovering, as aforesaid, shall
be, and is and are hereby freed and discharged of and from all and every ^{is discharged;}
the penalties and forfeitures by this act inflicted upon all and every person ^{from all}
and persons being a vender or venders, retailer or retailers, having in his, ^{penalties.}
her, or their custody or possession any such silk stockings, silk mitts, or
silk gloves, not made or manufactured in *Great Britain*; and of and
from any proof that the same so seized, as aforesaid, were manufactured
in *Great Britain*.

Señ. 9. " And be it further enacted by the authority aforesaid, That ^{Recovery and}
all pecuniary penalties and forfeitures by this act imposed, shall and may ^{application of}
be sued for and recovered in any of his majesty's courts of record at *West-* ^{the pecuniary}
minster, or in the court of exchequer at *Edinburgh*, respectively, by action, ^{penalties and}
bill, plaint, or information, in the name of his majesty's attorney general, ^{forfeitures.}
or in the name of his majesty's advocate in *Scotland*, or in the name or
names of some officer or officers of the customs; and that one moiety of
every such penalty and forfeiture shall be to his majesty, his heirs, and
successors, and the other moiety thereof to the officer or officers of the
customs who shall inform and prosecute for the same.

Señ. 10. " Provided also, and be it further enacted by the authority ^{Wearer of}
aforesaid, That nothing in this act contained shall extend, or be in any ^{such goods}
wise construed to extend, to subject any person or persons who shall wear ^{not subject to}
or make use of such silk stockings, silk mitts, or silk gloves, as aforesaid, ^{any forfeiture}
as part of his, her, or their apparel, or dress only, to any forfeiture, or ^{or penalty.}
to any pecuniary penalty or penalties inflicted by this act, or to any proof
that the same were manufactured within *Great Britain*.

Señ. 11. " And whereas by an act passed in the third year of the reign ^{Penalties in-}
of his present majesty, for explaining, amending, and rendering more ^{licted by act.}
effectual, an act made in the nineteenth year of the reign of king ^{19 Hen. 7,}
Henry the seventh, intituled, *Silk Works*, certain penalties are thereby inflicted ^{on persons}
upon any person or persons, who shall import, bring, or convey, or cause ^{importing}

ribbands, laces, or girdles, of foreign manufacture, and upon the sales therein, and the venders,

or concealers thereof, deemed insufficient,

and persons for the future guilty of any of the said offences, to forfeit 200l. with costs of suit;

one moiety to the king, and the other to the prosecutor;

but the wearer is not to be subject to any forfeiture or penalty.

Such ribbands, laces, and girdles, instead of being burnt, pursuant to the recited act, are to be publickly sold,

to be imported, brought, or conveyed into this kingdom, any ribbands, laces, or girdles, not made and manufactured in *Great Britain*, whether the same be wrought of silk alone, or wrought of silk mixed with any other materials; or who shall be aiding, abetting, or assisting, in the bringing and conveying, or importing into this kingdom any such ribbands, laces, or girdles, as aforesaid; and also upon every person and persons being a vender or venders, retailer or retailers, of any kind of ribbands, laces, or girdles, respectively, in whose custody or possession any such ribbands, laces, or girdles, or any of them, shall be found; or who shall sell or expose to sale, any such ribbands, laces, or girdles, as aforesaid; or who shall conceal any such ribbands, laces or girdles, with intent to prevent the forfeiture or seizure of the same; which penalties, by reason of the smallness thereof, have been found insufficient to answer the good intention of the said act; be it therefore further enacted by the authority aforesaid, That all and every person and persons, who shall be guilty of any of the offences aforesaid, shall, for every such offence, forfeit and pay the sum of two hundred pounds, together with costs of suit; and shall and may be sued for and recovered in any of his majesty's courts of record at *Westminster*, or in the court of exchequer at *Edinburgh* respectively, by action, bill, plaint, or information, in the name of his majesty's attorney general, or in the name of his majesty's advocate in *Scotland*, or in the name or names of some officer or officers of the customs; and that one moiety of every such penalty and forfeiture shall be to his majesty, his heirs and successors; and the other moiety thereof, to the officer or officers who shall inform and prosecute for the same.

Sett. 12. "Provided always, and it is hereby further enacted by the authority aforesaid, That nothing in this act contained shall extend, or be in any wise construed to extend, to subject any person or persons whatsoever, who shall wear or make use of such ribbands, laces or girdles, as aforesaid, as part of his, her, or their apparel or dress only, to any forfeiture, or to any pecuniary penalty or penalties inflicted by the said recited act, or this act; or to any proof that such ribbands, laces or girdles, were manufactured in *Great Britain*.

Sett. 13. "And whereas in and by the said recited act it is enacted, That all and every such ribbands, laces and girdles, after condemnation thereof, shall, by order of the court, judge or judges, or justices, where or before whom such condemnation shall be had, be publickly burnt and intirely destroyed: and whereas the intention of the said act might be more effectually answered, if such ribbands, laces and girdles, were sold and disposed of in manner herein after mentioned, instead of being burnt and destroyed as aforesaid, be it therefore further enacted, by the authority aforesaid, That all such ribbands, laces and girdles, shall be only seized and secured, in pursuance of the powers granted by the said act, by some officer or officers of his majesty's customs, and shall, after condemnation thereof in due course of law, be publickly sold for the best advantage for exportation, by the candle; and one moiety of the produce or money arising by the sale of such ribbands, laces and girdles, shall be paid to the use of the king's majesty, his heirs and successors, and the other moiety thereof to the use of such officer or officers of the customs who shall

shall seize and secure the same as aforesaid; and no such ribbands, laces, or girdles, shall be consumed or used in this kingdom, but shall be exported again to some port or place, not being any part of his majesty's dominions, and shall not be sold, otherwise than on condition to be exported as aforesaid; and such ribbands, laces, and girdles, shall not be delivered out of the warehouse wherein the same shall have been secured, until sufficient security be first given to the king's majesty, his heirs and successors, (which the commissioners of his majesty's customs are hereby impowered and required to take) that the same, and every part thereof, shall be exported as aforesaid, and not landed again in any part of his majesty's dominions; which said securities shall be discharged without fee or reward, upon certificate returned under the common seal of the chief magistrate in any place or places beyond the seas, and out of his majesty's dominions, or under the hands and seals of two known *English* merchants of such place, that the goods were there landed, or upon proof by credible persons that such goods were taken by enemies, or perished in the seas, the examination and proof thereof being left to the judgement of the said commissioners; which commissioners are hereby impowered, from time to time, to call upon the person or persons who have entered into such security to produce such certificate or proof as aforesaid.

SECT. 14. "Provided always, and it is hereby further enacted, That if any officer or officers of the customs shall neglect or refuse, for the space of one month after such condemnation as aforesaid, to prosecute to effect any person or persons for any pecuniary penalty or forfeiture by this act inflicted upon offenders against the same; that then it shall be lawful for any person or persons whomsoever, to sue for, prosecute and recover the respective pecuniary penalties and forfeitures by this act inflicted, in like manner as is herein before directed with regard to the officers of the customs; and one moiety of the said pecuniary forfeitures, when recovered, shall, in such case, go and be applied to the use of his majesty, his heirs and successors, and the other moiety to the person or persons who shall sue or prosecute for the same respectively.

Slander.

SLANDER is the publishing words in writing, or by speaking, of any person, by reason of which he becomes liable to suffer some corporal punishment, or sustains some damage. It is no excuse, at least *in foro conscientie*, that the thing charged was true. The law does indeed, in

compassion to mens infirmities, allow it to be a justification in an action for words *spoken*; but as to *written* scandal it admits of none, if the matter of the slander be true: yet it is very unbecoming a man, and much more so a Christian, to be guilty of this offence. If a person has done any thing which the law prohibits, he is liable to answer for it judicially; but it can answer no good end for private persons to brand him with it, and there is a degree of cruelty as well as inhumanity in so doing. To rally a man for some foible or small failing, if it be done with humour and in a friendly way, may do him service; but the publishing even any of these, which serve only to lessen him in the esteem of his neighbours, or make him the object of ridicule, should be abstained from; for, although it may not amount to slander in the legal notion of that word, it must create ill blood between the parties. This offence was ever held in great detestation; but slander in writing hath at all times, and with good reason, been punished in a more exemplary manner; for it has a greater tendency to provoke men to breaches of the peace, quarrels, and murders; it is of much more dangerous consequence to society. Words, which are frequently the effect of sudden passion, may soon be buried in oblivion; but that which is committed to writing, besides that the author is actuated by deliberate malice, is spread further, and the slander is for the most part so lasting, as to be scarce ever forgiven. For written scandal the party injured may proceed against the author by indictment or information, it being considered as a public offence; and he may also proceed by an action upon the case for the private damage thereby sustained; or, if the defamation be merely spiritual, by a suit in the ecclesiastical court. Peers, and the great men of the realm, besides these ways of redress, have another, by an action of *scandalum magnatum*, which is peculiar to themselves. If the slander is by words spoke, there is in general no other remedy than by an action on the case, or a suit in the spiritual court; yet even this may in certain cases be proceeded against criminally. For instance, if it be a slander of the state, as the saying the coin is abased by authority, or any other thing whereby the state is or may be prejudiced; or if it be a slander which it more particularly concerns the public to prevent, as the speaking any thing scandalous to a justice of peace in the actual execution of his office, it may be proceeded against by indictment or information. 4 *Bac. Abr.* 480.

In general, it seems that words which directly tend to a breach of the peace, as if one man challenge another, are cognizable before justices of the peace, for which the party may be bound to the good behaviour and even indicted. 2 *Salk.* 698, 1 *Keb.* 931.

STAT. *West.* 1, (3 *Ed.* 1,) c. 34, [*A. D.* 1275, *intituled*] “None shall report slanderous news, whereby discord may arise.”

1 *Leon.* 287.
Dyer, 155.
2 *Inst.* 225.
12 *Co.* 133.

“Forasmuch as there have been oftentimes found in the country deviators of tales, whereby discord, or occasion of discord hath many times arisen between the king and his people, or great men of this realm; for the damage

damage that hath and may thereof ensue, it is commanded, that from henceforth none be so hardy to tell or publish any false news or tales, whereby discord, or occasion of discord or slander may grow between the king and his people, or the great men of the realm; (2) and he that doth so, shall be taken and kept in prison, until he hath brought him into the court, which was first author of the tale.

1 Roll. 444.
3 BulAr. 225.
2 R. 2, stat. 1, c. 5.
12 R. 2, c. 11.
1 & 2 Ph. & M. c. 3.
1 El. c. 6.

STAT. 2 Ric. 2, c. 5, [A. D. 1378, intituled] "The penalty for telling slanderous lyes of the great men of the realm."

"Item, of devisors of false news and of horrible and false lyes, of prelates, dukes, earls, barons, and other nobles, and great men of the realm, (2) and also of the chancellor, treasurer, clerk of the privy seal, stewards of the king's house, justices of the one bench or of the other, and of the great officers of the realm, of things which by the said prelates, lords, nobles, and officers afore said, were never spoken, done, nor thought, (3) in great slander of the said prelates, lords, nobles, and officers, whereby debates and discords might rise betwixt the said lords, or between the lords and the commons (which God forbid) and whereof great peril and mischief might come to all the realm, and quick subversion and destruction of the said realm, if due remedy be not provided: (4) it is straitly defended upon grievous pain, for to eschew the said damages and perils, that from henceforth none be so hardy to devise, speak, or to tell any false news, lyes, or other such false things, of prelates, lords, and of other afore said, whereof discord or any slander might rise within the same realm; (5) and he that doth the same shall incur and have the pain another time ordained thereof by the statute of *Westminster* the first, which will, that he be taken and imprisoned till he have found him of whom the word was moved.

12 Co. 134.
2 Inst. 227.
Vaughan, 139.
Palmer, 565.
2 Mod. 98.
161.
3 Bulst. 235.
1 Leon. 287.
Dyer, 155.
4 Co. 12.
Kel. 26.
Cro. El. 1.
Cro. Car. 135.
Jones, 194.
Rast. 393.
3 Ed. 1, c. 34.
12 R. 2, c. 11.
1 and 2 Ph. and M. c. 3.
1 El. c. 6.

STAT. 12 Ric. 2, c. 11, [A. D. 1388, intituled] "The punishment of him that telleth lyes of the peers or great officers of the realm."

"Item, whereas it is contained, as well in the statute of *Westminster* the first, as in the statute made at *Gloucester*, the second year of the reign of our lord the king that now is, that none be so hardy to invent, to say, or to tell any false news, lyes, or such other false things, of the prelates, dukes, earls, barons, and other nobles, and great men of the realm, and also of the chancellor, treasurer, clerk of the privy seal, the steward of the king's house, the justice of the one bench or of the other, and other great officers of the realm, (2) and he that doth so shall be taken and imprisoned, till he hath found him of whom the speech shall be moved: (3) it is accorded and agreed in this parliament, that when any such is taken and imprisoned, and cannot find him by whom the speech be moved, as before is said, that he be punished by the advice of the council, notwithstanding the said statutes."

2 Inst. 227.
228. 3 Ed. 1.
c. 34. 2 R. 2.
stat. 1, c. 5.
Dyer, 155.
285. 4 Co. 12.
Kel. 26.

Soldiers.

WHEN the king, says lord Coke, was to be served with soldiers for his war, a knight or esquire of the country that had revenues, farmers, and tenants, would covenant with the king by indenture inrolled in the Exchequer, to serve the king for such a term with so many men, particularly mentioned in the list, in his war. 1 *Inst.* 71.

In consequence of this method of raising soldiers, there are many regulations concerning them by divers statutes; which being now out of use, it is thought sufficient just to mention them, viz. 18 *Hen.* 6, c. 19. 7 *Hen.* 7, c. 1. 3 *Hen.* 8, c. 5, 2 & 3 *Ed.* 6, c. 2. 4 and 5 *Phil.* and *Ma.* c. 3.

The present regulations concerning the soldiery (except the militia) are chiefly contained in the act against mutiny and desertion, which is enacted every year; and, as the last of these acts will be soon expired, it is, therefore, thought proper to omit it in this place. For other matters, see **Foreign Service, Militia.**

Stamps.

A Stamp is a mark which is by law ordained to be affixed to certain instruments, writings, and things. The use of this mark is to denote that the duty or duties imposed upon any instrument, writing, or thing, has or have been paid, or that security is given for the payment of the same. 5 *Bac. Abr.* 595.

The statutes relating to these duties, are

5 <i>Will.</i> c. 21.	10 <i>Ann.</i> c. 26.	29 <i>Geo.</i> 2, c. 13.
6 & 7 <i>Will.</i> c. 12.	12 <i>Ann.</i> st. 1, c. 2.	30 <i>Geo.</i> 2, c. 19.
9 & 10 <i>Will.</i> c. 25.	12 <i>Ann.</i> st. 2, c. 9.	31 <i>Geo.</i> 2, c. 31.
9 & 10 <i>Will.</i> c. 44.	5 <i>Geo.</i> 1, c. 19.	32 <i>Geo.</i> 2, c. 35.
1 <i>Ann.</i> st. 2, c. 22.	6 <i>Geo.</i> 1, c. 21.	2 <i>Geo.</i> 3, c. 36.
8 <i>Ann.</i> c. 9.	11 <i>Geo.</i> 1, c. 33.	5 <i>Geo.</i> 3, c. 35, 46, 47.
9 <i>Ann.</i> c. 23.	12 <i>Geo.</i> 1, c. 8.	
30 <i>Ann.</i> c. 19.	16 <i>Geo.</i> 2, c. 26.	

In the statute of 10 *Ann. c. 19*, are the following clauses, which bring all the rest within the jurisdiction of the justices of the peace.

STAT. 10 *Ann. c. 19*. [*A. D. 1711*] made, among other purposes, “for laying several duties upon certain printed papers, pamphlets, and advertisements.”

SECT. 172. “And be it further enacted by the authority aforesaid, That it shall and may be lawful to and for any two or more of the justices of the peace for the time being, residing near to the place where any pecuniary forfeitures, not exceeding twenty pounds upon this or any of the acts of parliament, touching any the duties under the management or care of the said commissioners for managing her majesty’s duties on stamp vellum, parchment, and paper, shall be incurred, or any offence against any of the same acts, shall be committed, in any wise relating to the same duties, or any of them, by which any sum of money only may be forfeited, to hear and determine the same; which said justices of the peace are hereby authorized and required, upon any information exhibited, or complaint made in that behalf, within one year after seizure made, or such offence committed, to summon the party accused, and also the witnesses on either side, and upon the appearance or contempt of the party accused, shall be convicted of the offence alledged against him, and to award and issue out warrants under their hands and seals, for levying any pecuniary penalties so adjudged, on the goods of the offender, and to cause sale to be made thereof, in case they shall not be redeemed within six days, rendering to the party the overplus, if any; and if any party shall find himself aggrieved, or remain unsatisfied in the judgment of the said justices, then he or they shall or may, by virtue of this act, complain or appeal to the justices of the peace at the next general quarter-sessions for that county, riding, or place, who are hereby empowered to summon and examine witnesses upon oath, and finally to hear and determine the same, and in case of conviction, to issue warrants for levying the penalties, as aforesaid.”

SECT. 173. “Provided nevertheless, That it shall and may be lawful to and for the said respective justices, where they shall see cause, to mitigate or lessen any such penalties, as they, in their discretions, shall think fit, the reasonable costs and charges of the officers and informers, as well in making the discovery, as in the prosecution of the same, being always allowed over and above such mitigation, and so as such mitigation do not reduce the penalties to less than double the duties over and above the said costs and charges; any thing contained in this act, or any other act of parliament, to the contrary notwithstanding.”

SECT. 174. “Provided also, That no writ or writs of *certiorari* shall supersede execution, or other proceedings, upon any order or orders made by the justices aforesaid, in pursuance of this act; but that execution, and other proceedings, shall be had and made thereupon; any such writ or writs, or allowance thereof, notwithstanding.”

It

It is generally provided by the several acts, that the forfeitures shall be distributed, half to the king, and half to him that shall sue. But by stat. 5 Geo. 3, c. 46, All penalties and forfeitures by that act, not therein otherwise ordered, shall be half to the king, and half to him that shall sue in any court of record, with full costs.

The clauses and sums particularly relating to each instrument charged with stamp duties, reduced to an alphabetical method, are as follow:

	<i>l. s. d.</i>
<i>Action</i> entered in an inferior court that holds plea of } 40s. but issues no writ, or process, or mandate, pays }	0 0 6
And _____	5 <i>W. & M. c. 21, sect. 3.</i>
And _____	0 0 6
And _____	9 & 10 <i>W. 3, c. 33, sect. 32.</i>
<i>Adjudication</i> in Scotland _____	0 0 6
_____	12 <i>Geo. 1, c. 33, f. 3.</i>
<i>Administration</i> (letters of) of estates above 20 <i>l.</i> value _____	0 2 3
And _____	10 <i>Ann. c. 10, f. 100.</i>
Exceptions in favour of common soldiers and seamen, 5 <i>W. & M. c. 21, f. 9.</i>	0 5 0
c. 25, f. 44.	9 & 10 <i>W. 3, c. 25, f. 19.</i>
<i>Admiralty-Sentence</i> , attachment and relaxation _____	5 <i>W. & M. c. 21, f. 9.</i>
And _____	9 & 10 <i>W. 3, c. 25, f. 17.</i>
Warrant, monition, or personal decree _____	0 2 6
And _____	5 <i>W. & M. c. 21, f. 3.</i>
And _____	9 & 10 <i>W. 3, c. 25, f. 24.</i>
<i>Libel</i> , allegation, deposition, answer, sentence, or final } decree _____ }	0 0 6
And _____	5 <i>W. & M. c. 21, f. 3.</i>
<i>Admission</i> into a corporation, or company, _____	0 0 6
Into an inn of court, or chancery, or matriculation _____	9 & 10 <i>W. 3, c. 25, f. 36.</i>
And _____	0 2 0
And into inns of court _____	5 <i>Geo. 3, c. 46, f. 2.</i>
And by 5 <i>Geo. 3, c. 47, 4<i>l.</i> more.</i>	5 <i>W. & M. c. 21, f. 3.</i>
To a fellowship of the college of physicians, or to any } office of any court, not being an annual office under } the value of ten pounds <i>per annum</i> _____ }	2 0 0
And _____	5 <i>W. & M. c. 21, f. 3. & 6 & 7</i>
And _____	7 <i>W. 3, c. 12, f. 5.</i>
<i>Admittance</i> to a copyhold estate. See <i>Copyhold.</i>	2 0 0
<i>Advertisement</i> in weekly papers _____	9 & 10 <i>W. 3, c. 25, f. 9, 10.</i>
And _____	10 <i>Ann. st. 2, c. 9, f. 21.</i>
Printer not paying the duty in time, forfeits treble sum _____	0 1 0
<i>Advertisement</i> in periodical pamphlets, published at a } greater interval than a week, pays _____ }	0 1 0
<i>Affidavit</i> , and copies thereof, pay _____	10 <i>Ann. c. 19, f. 118.</i>
And _____	0 2 0
And _____	30 <i>Geo. 2, c. 19, f. 1.</i>
<i>Affidavit</i> of plaintiff's cause of action pays as other affi- } davits _____ }	0 0 6
Exceptions in favour of affidavits concerning burying in woollen,—and those taken before cus- } tom-house officers, or justices of the peace, or commissioners for raising the king's duties, 5 <i>W.</i>	5 <i>W. & M. c. 21, f. 3.</i>
& <i>M. c. 21, f. 3.</i> 9 & 10 <i>W. 3, c. 25, f. 28.</i> 32 <i>Geo. 2, c. 35, f. 2.</i> And those made for the } allowance of duties on soap used in the woollen manufacture, 10 <i>Ann. c. 19, f. 29, 30.</i> 12 <i>Ann.</i>	9 & 10 <i>W. 3, c. 25, f. 28, 29.</i>
st. 2, c. 9, f. 16, 17.	32 <i>Geo. 2, c. 35, f. 2, 3.</i>
What payable for affidavits of performance of quarentine, 9 <i>Ann. c. 2, f. 6, 7.</i>	12 <i>Geo. 1, c. 29, f. 2.</i>
<i>Ale-licence.</i> See <i>Licence.</i>	
<i>Allegation</i> in the spiritual, or admiralty-court, and copy } thereof, pays _____ }	0 0 6
And _____	5 <i>W. & M. c. 21, f. 3.</i>
	9 & 10 <i>W. 3, c. 25, f. 36.</i>

l. s. d.

<i>Almanack</i> for one year printed on one side of paper, pays	0 0 1	9 <i>Ann. c. 23, f. 23.</i>
And _____	0 0 1	30 <i>Geo. 2, c. 19, f. 1.</i>
Other almanacks for one year, pay _____	0 0 2	9 <i>Ann. c. 23, f. 23.</i>
And _____	0 0 2	3 <i>Geo. 2, c. 19, f. 1.</i>
Those for more years, pay for three years, 9 <i>Ann. c. 23 f. 23.</i> & 53, and the additional duty for every year, 3 <i>Geo. 2, c. 19, f. 1.</i>		
What book to be deemed an almanack, 10 <i>Ann. c. 19, f. 175.</i>		
One sheet only needs to be stamped, 9 <i>Ann. c. 23, f. 26.</i>		
Provisions in favour of almanacks in bibles and common prayer books, and saving the rights of proprietors of almanacks, 9 <i>Ann. c. 25, f. 52, 53.</i>		
What security is to be taken for payment of the duty on paper delivered to the printers of almanacks, and what allowance is to be made for the copies of such almanacks as shall be brought to the commissioners, 9 <i>Ann. c. 23, f. 38.</i>		
<i>Answer</i> in court of equity pays _____	0 1 0	5 <i>W. & M. c. 21, f. 3.</i>
And _____	0 1 0	9 & 10 <i>W. 3, c. 25, f. 26.</i>
Copy thereof _____	0 0 1	5 <i>W. & M. c. 21, f. 3.</i>
And _____	0 0 1	9 & 10 <i>W. 3, c. 25, f. 40.</i>
And _____	0 0 1	32 <i>Geo. 2, c. 35, f. 8.</i>
<i>Appeal</i> from the court of admiralty, arches, or prerogative court of Canterbury or York, pays _____	2 0 0	5 <i>W. & M. c. 21, f. 3.</i>
And _____	2 0 0	9 & 10 <i>W. 3, c. 25, f. 17.</i>
And such appeal, and every appeal from the admiralty of Scotland, pays _____	2 0 0	12 <i>Ann. st. 2, c. 9, f. 21.</i>
For <i>Writs of Appeal</i> , see <i>Writ</i> .		
<i>Appearance</i> on special bail pays _____	0 1 0	5 <i>W. & M. c. 21, f. 3.</i>
And _____	0 1 0	9 & 10 <i>W. 3, c. 25, f. 25.</i>
Or common bail, or without bail _____	0 0 6	5 <i>W. & M. c. 21, f. 3.</i> & 9 & 10 <i>W. 3, c. 25, f. 33.</i>
And _____	0 0 6	4 <i>Ann. c. 12, f. 9.</i>
And _____	0 0 6	32 <i>Geo. 2, c. 35, f. 4.</i>
Penalty for not entering or filing an appearance within the time limited by the statutes, 5 <i>W. & M. c. 21, f. 3.</i> 9 & 10 <i>W. 3, c. 25, f. 33.</i>		
<i>Apprentices</i> , masters pay 6 <i>d.</i> in the pound for 5 <i>l.</i> or under, and one shilling for more, 8 <i>Ann. c. 9, f. 32.</i>		
On pain of 5 <i>l.</i> 9 <i>Ann. c. 21, f. 66.</i> And double the duty, 18 <i>Geo. 2, c. 22, f. 24.</i>		
The time of payment enlarged by several statutes, 9 <i>Ann. c. 21, f. 65.</i> 12 <i>Ann. st. 2, c. 9, f. 31.</i> 6 <i>Geo. 1, c. 11, f. 52.</i> 7 <i>Geo. 1, st. 1, c. 20, f. 30.</i> 8 <i>Geo. 1, c. 2, f. 38.</i> 11 <i>Geo. 1, c. 8, f. 24.</i> 18 <i>Geo. 2, c. 22, f. 23.</i> 27 <i>Geo. 2, c. 16, f. 5.</i> 28 <i>Geo. 2, c. 19, f. 4.</i>		
Things given with apprentices, not being money, how to be valued, 8 <i>Ann. c. 9, f. 45.</i>		
The indenture to bear date when executed, and to specify the sum given, on pain of double the sum, 8 <i>Ann. c. 9, f. 35.</i>		
And of the apprentice's being disabled from following his trade, &c. 8 <i>Ann. c. 9- f. 39.</i>		
And of the indenture's being no evidence, 8 <i>Ann. c. 9, f. 43.</i>		
Within what time to be brought to the office and stamped, and the duty when to be paid, 8 <i>Ann. c. 9, f. 36, 37, 38.</i>		
Penalties on non-payment of apprenticeships duties to be discharged on payment of double duties, 20 <i>Geo. 2, c. 45, f. 5.</i>		
Encouragement to apprentices paying the duty in the master's default, 18 <i>Geo. 2, c. 22, f. 25.</i> 20 <i>Geo. 2, c. 45, f. 5.</i>		
Provisions in favour of indentures for binding poor children apprentices, 9 & 10 <i>W. 3, c. 25, f. 30.</i> 8 <i>Ann. c. 9, f. 4.</i> 12 <i>Ann. st. 2, c. 9, f. 22.</i> See stat. 5 <i>Geo. 3, c. 46.</i>		
<i>Assurance.</i> See <i>Policy</i> .		
Assurance corporation bonds exempt from stamp duties, 6 <i>Geo. 1, c. 18, f. 8.</i>		
<i>Attachment</i> from the court of Admiralty. See <i>Admiralty</i> .		
<i>Attorney</i> , what to pay for his admittance. See <i>Admission</i> .		
Letter of attorney pays _____	0 0 6	5 <i>W. & M. c. 21, f. 3.</i>
And _____	0 0 6	9 & 10 <i>W. 3, c. 25, f. 37.</i>
And _____	0 0 6	12 <i>Ann. st. 2, c. 9, f. 21.</i>
And _____	0 1 0	30 <i>Geo. 2, c. 9, f. 1.</i>

Bail.

Bail. See *Appearance*.

Bail-bond may be assigned, but not sued before it is stamped, 4 *Ann. c.* 16, *f.* 20.

Bank securities exempt from stamp duties, 3 *Geo. 1. c.* 8, *f.* 39.

Barister. See *Degrees*.

Batchelor of arts not chargeable with the duty of 40s. 6 & 7 *W. 3. c.* 32, *f.* 3. 9 & 10 *W. 3. c.* 25, *f.* 51. 12 *Ann. st.* 2, *c.* 9, *f.* 22.

			1 s. d.	
Bill in equity pays	_____	_____	0 1 0	5 <i>W. & M. c.</i> 21, <i>f.</i> 3.
And	_____	_____	0 1 0	9 & 10 <i>W. 3. c.</i> 25, <i>f.</i> 26.
Copy	_____	_____	0 0 1	5 <i>W. & M. c.</i> 21, <i>f.</i> 3.
And	_____	_____	0 0 1	9 & 10 <i>W. 3. c.</i> 25, <i>f.</i> 40.
And	_____	_____	0 0 1	32 <i>Geo. 2. c.</i> 37, <i>f.</i> 8.
Bills of exchange, or of fees, or parcels, &c. pay nothing,			5	5 <i>W. & M. c.</i> 21, <i>f.</i> 5. 9 & 10 <i>W. 3.</i>
<i>c.</i> 25, <i>f.</i> 43.				
Bill of lading pays	_____	_____	0 0 4	9 <i>Ann. c.</i> 23, <i>f.</i> 23.
Bill of Middlesex. See <i>Writ</i> .				
Bond pays	_____	_____	0 0 6	5 <i>W. & M. c.</i> 21, <i>f.</i> 3.
And	_____	_____	0 0 6	9 & 10 <i>W. 3. c.</i> 25, <i>f.</i> 37.
And	_____	_____	0 0 6	12 <i>Ann. st.</i> 2, <i>c.</i> 9, <i>f.</i> 21.
And	_____	_____	0 1 6	30 <i>Geo. 2. c.</i> 19, <i>f.</i> 1.
Brief for collecting charity, pays the single duty of } forty shillings	_____	_____	2 0 0	{ 5 <i>W. & M. c.</i> 21, <i>f.</i> 3. 9 & 10 <i>W. 3. c.</i> 25, <i>f.</i> 69. 12 <i>Ann. st.</i> 2, <i>c.</i> 9, <i>f.</i> 22.
<i>Capias.</i> See <i>Writ</i> .				
Cards per pack, pay	_____	_____	0 0 6	9 <i>Ann. c.</i> 23, <i>f.</i> 39.
And	_____	_____	0 0 6	26 <i>Geo. 2. c.</i> 13, <i>f.</i> 1.
Certificate on degrees. See <i>Degrees</i> .				
Certificate on marriage, pays	_____	_____	0 5 0	{ 5 <i>W. & M. c.</i> 21, <i>f.</i> 3, & 9 & 10 <i>W. 3. c.</i> 25, <i>f.</i> 53.
Proviso in favour of seamen's widows, 6 & 7 <i>W. 3. c.</i> 12, <i>f.</i> 2.				
Certificates for drawbacks, pay	_____	_____	0 0 8	9 <i>Ann. c.</i> 23, <i>f.</i> 23.
Proviso in favour of certificates concerning soap used in woollen works, 10 <i>Ann. c.</i> 19, <i>f.</i> 29, 30.				
12 <i>Ann. st.</i> 2, <i>c.</i> 9, <i>f.</i> 16, 17.				
Certificates for performance of quarentine, what to pay. 9 <i>Ann. c.</i> 2. <i>f.</i> 7.				
<i>Certiorari.</i> See <i>Writ</i> .				
Charter party in England, pays	_____	_____	0 0 6	5 <i>W. & M. c.</i> 21, <i>f.</i> 3.
And	_____	_____	0 0 6	9 & 10 <i>W. 1. c.</i> 25, <i>f.</i> 37.
And in Great Britain	_____	_____	0 0 6	12 <i>Ann. st.</i> 2, <i>c.</i> 9, <i>f.</i> 21.
Cinque ports. See <i>Admiralty</i> .				
Circuit pardon pays	_____	_____	2 0 0	{ 5 <i>W. & M. c.</i> 21, <i>f.</i> 3. 9 & 10 <i>W. 3. c.</i> 25, <i>f.</i> 3, 50. 12 <i>Ann. st.</i> 2, <i>c.</i> 9, <i>f.</i> 21.
Citation in ecclesiastical courts, pays	_____	_____	0 0 6	5 <i>W. & M. c.</i> 21, <i>f.</i> 3.
And	_____	_____	0 0 6	9 & 10 <i>W. 3. c.</i> 25, <i>f.</i> 36.
And	_____	_____	0 0 6	12 <i>Geo. 1. c.</i> 33, <i>f.</i> 3.
Copy thereof	_____	_____	0 0 6	5 <i>W. & M. c.</i> 21, <i>f.</i> 3.
And	_____	_____	0 0 6	9 & 10 <i>W. 3. c.</i> 25, <i>f.</i> 36.
Clare constat in Scotland pays	_____	_____	0 2 3	10 <i>Ann. c.</i> 19, <i>f.</i> 100.
Clerks admittance. See <i>Admission</i> .				
Clerks indentures, are liable to the same duties as apprentices indentures, for which see <i>Apprentice</i> .				
Cognition of heirs in Scotland, pays	_____	_____	0 2 3	10 <i>Ann. c.</i> 19, <i>f.</i> 100.
Collation. See <i>Presentation</i> .				
Commission ecclesiastical not otherwise charged, pays	_____	_____	0 2 6	5 <i>W. & M. c.</i> 21, <i>f.</i> 3.
And	_____	_____	0 2 6	9 & 10 <i>W. 3. c.</i> 25, <i>f.</i> 23.
Commissions of rebellion do not pay as letters patent	_____	_____		{ 6 & 7 <i>W. 3. c.</i> 12, <i>f.</i> 4. 12 <i>Ann. st.</i> 2, <i>c.</i> 9, <i>f.</i> 21.
Common Recovery. See <i>Writ</i> .				
Contract, or other obligatory instrument, pays	_____	_____	0 0 6	5 <i>W. & M. c.</i> 21, <i>f.</i> 3.
And	_____	_____	0 0 6	9 & 10 <i>W. 3. c.</i> 25, <i>f.</i> 37.

And

	<i>l. s. d.</i>	
And if a deed	0 0 6	12 <i>Ann. fl.</i> 2, c. 9, f. 21.
Copy of a record or other proceeding at <i>Weslm.</i> pays	0 0 6	5 <i>W. & M. c.</i> 21, f. 3.
And	0 0 6	9 & 10 <i>W.</i> 3, c. 25, f. 35.
Of a will	0 0 1	5 <i>W. & M. c.</i> 21, f. 3.
And	0 0 1	9 & 10 <i>W.</i> 3, c. 15, f. 41.
Copyhold surrenders, or copies, are neither within 5 <i>W. & M.</i> nor 9 & 10 <i>W.</i> 3, 6 & 7 <i>W.</i> 3, c. 12, f. 2. 9 & 10 <i>W.</i> 3, c. 25, f. 45.		
But such surrenders, copies and admittances, except to the use of a will, or to custom right or tenant right estate, pay	0 2 3	{ 10 <i>Ann. c.</i> 19, f. 100. 12 <i>Ann. fl.</i> 1, c. 2, f. 48.
Covenant. See <i>Writ.</i>		
County palatine and dutchy of <i>Lancaster</i> letters patent, or exemplification of the same, pay	2 0 0	5 <i>W. & M. c.</i> 21, f. 3.
And	2 0 0	9 & 10 <i>W.</i> 3, c. 25.
And	2 0 0	12 <i>Ann. fl.</i> 2, c. 9, f. 21.
Grants of profits under the seal of the said dutchy or county pay	2 0 0	5 <i>W. & M. c.</i> 21, f. 3.
And	2 0 0	9 <i>W.</i> 3, c. 25, f. 2.
Process from counties palatine pays	0 0 6	5 <i>W. & M. c.</i> 21.
And	0 0 6	9 <i>W.</i> 3, c. 25, f. 13.
Custom right surrender to a copyhold. See <i>Copyhold.</i>		
Debentures for draw-backs. See <i>Certificates.</i>		
Declaration and copy pay	0 0 1	5 <i>W. & M. c.</i> 21.
And	0 0 1	9 & 10 <i>W.</i> 3, c. 25, f. 38.
Decree, or dismissal of a court of equity	0 0 6	5 <i>W. & M. c.</i> 21, f. 3.
And	0 0 6	9 & 10 <i>W.</i> 3, c. 25, f. 13.
Decree in the Admiralty, or Cinque-ports. See <i>Admiralty.</i>		
Dedimus <i>potestatem.</i> See <i>Writ.</i>		
Deed enrolled, pays	0 5 0	5 <i>W. & M. c.</i> 21, f. 3.
Exempted from further duties by 9 & 10 <i>W.</i> 3, c. 25, f. 52.		
Indentures, or deeds not otherwise charged, pay	0 0 6	5 & 6 <i>W. & M. c.</i> 21, f. 3.
And unless they are made for binding parish children apprentices	0 0 6	9 & 10 <i>W.</i> 3, c. 25, f. 30.
And all deeds in <i>Great Britain</i> , not otherwise charged by 12 <i>Ann.</i> except bail-bonds and assignments thereof, and apprentices indentures of poor or charity children, and deeds in <i>Scotland</i> charged with the duty of 2s. 3d.	0 0 6	12 <i>Ann. fl.</i> 2, c. 9, f. 21.
And	0 1 0	3 <i>Geo.</i> 2, c. 19, f. 1.
And if ingrossed without being stamped, not to be evidence without payment of the further sum of	5 0 0	5 <i>W. & M. c.</i> 21, f. 11.
And	10 0 0	9 & 10 <i>W.</i> 3, c. 25, f. 59.
Degree in the two universities, or inns of court, pays	2 0 0	{ 5 <i>W. & M. c.</i> 21, f. 3. 9 & 10 <i>W.</i> 3, c. 25, f. 51.
Exception in favour of batchelors of arts, 6 & 7 <i>W.</i> 3, c. 12, f. 3.		9 & 10 <i>W.</i> 3, c. 25, f. 51.
Demurrer in law and copy thereof pay	0 0 1	5 <i>W. & M. c.</i> 21, f. 3.
And	0 0 1	9 & 10 <i>W.</i> 3, c. 25, f. 38, 39.
And	0 0 1	32 <i>Geo.</i> 2, c. 35, f. 9, 10.
In Equity	0 0 1	5 <i>W. & M. c.</i> 21, f. 3.
And	0 0 1	9 & 10 <i>W.</i> 3, c. 25, f. 38.
Copy thereof	0 0 1	5 <i>W. & M. c.</i> 21, f. 3.
And	0 0 1	9 & 10 <i>W.</i> 3, c. 25, f. 39.
And	0 0 1	32 <i>Geo.</i> 2, c. 25, f. 8.
Depositions taken in the court of equity by commission pay	0 1 0	5 <i>W. & M. c.</i> 21, f. 3.
And	0 1 0	9 & 10 <i>W.</i> 3, c. 25, f. 26.
Depositions in Chancery (except paper draughts by commission before engrossed)	0 0 1	32 <i>Geo.</i> 2, c. 35, f. 8.

	<i>l. s. d.</i>
Copies of depositions, and depositions not taken by } commission, pay _____	0 0 1 5 <i>W. & M. c. 21, f. 3.</i>
And _____	0 0 1 9 & 10 <i>W. 3, c. 25, f. 40.</i>
And _____	0 0 1 32 <i>Geo. 2, c. 35, f. 8.</i>
Depositions in the Ecclesiastical, Admiralty, or Cinque- } port courts, and copies thereof, pay _____	0 0 6 5 <i>W. & M. c. 21, f. 3.</i>
And _____	0 0 6 9 & 10 <i>W. 3, c. 25, f. 36.</i>
Dice per pair pay _____	0 5 0 9 <i>Ann. c. 23, f. 39.</i>
And _____	0 5 0 29 <i>Geo. 2, c. 13, f. 1.</i>
<i>Dismissal. See Decree.</i>	
<i>Dispensation from the archbishop, or master of the fa- } culties, pays _____</i>	2 0 0 5 <i>W. & M. c. 21, f. 3.</i>
And _____	2 0 0 9 & 10 <i>W. 3, c. 25, f. 8.</i>
And _____	2 0 0 12 <i>Ann. f. 2, c. 9, f. 24.</i>
<i>Donation. See Presentation.</i>	
<i>Drawback. See Certificate.</i>	
<i>Ecclesiastical courts, instruments and proceedings. See the Duties on the several instruments.</i>	
<i>Entry of actions. See Action.</i>	
<i>Entry of writs of error. See Writ.</i>	
<i>Exemplifications of letters patent. See Grants.</i>	
<i>Exemplification under seal of any court, pays _____</i>	0 5 0 5 <i>W. & M. c. 21, f. 3.</i>
And _____	0 5 0 9 & 10 <i>W. 3, c. 2, f. 12.</i>
<i>Fine. See Writ.</i>	
Grants by the King under the great seal of the dutchy } or county palatine of <i>Lancaster</i> , of any honour, dig- } nity, promotion, franchise, or privilege, and exem- } plifications thereof, pay _____	2 0 0 5 <i>W. & M. c. 21, f. 3.</i>
And _____	2 0 0 9 & 10 <i>W. 3, c. 25, f. 2.</i>
And _____	2 0 0 12 <i>Ann. f. 2, c. 9, f. 21.</i>
Grant of any sum exceeding 100 <i>l.</i> under the great or } privy seal, not directed to the great seal _____	2 0 0 5 <i>W. & M. c. 21, f. 3.</i>
And _____	2 0 0 9 & 10 <i>W. 3, c. 25, f. 4.</i>
Every such grant under the great seal of <i>Scotland</i> _____	2 0 0 12 <i>Ann. f. 2, c. 9, f. 21.</i>
And grant of office or employment above 50 <i>l.</i> per annum _____	2 0 0 5 <i>W. & M. c. 21, f. 3.</i>
And _____	2 0 0 9 & 10 <i>W. 3, c. 25, f. 5.</i>
And every such grant in <i>Great Britain</i> pays _____	2 0 0 12 <i>Ann. f. 2, c. 9, f. 21.</i>
Grant under the great seal, Exchequer, dutchy county } palatine, or privy seal, of lands in fee, or for years, } or other grants of profits not particularly charged _____	2 0 0 5 <i>W. & M. c. 21, f. 3.</i>
And _____	2 0 0 9 & 10 <i>W. 3, c. 25, f. 6.</i>
<i>Ha'cas Corpus. See Writ.</i>	
<i>Indentures. See Deeds and Apprentices.</i>	
<i>Institution pays _____</i>	0 5 0 5 <i>W. & M. c. 21, f. 3.</i>
And _____	0 5 0 9 & 10 <i>W. 3, c. 25, f. 14.</i>
And _____	0 5 0 12 <i>Ann. f. 2, c. 9, f. 21.</i>
<i>Institution, or licence by the Presbyters in Scotland _____</i>	0 5 0 12 <i>Ann. f. 2, c. 9, f. 12.</i>
<i>Interrogatories in equity _____</i>	0 1 0 5 <i>W. & M. c. 21, f. 3.</i>
And _____	0 1 0 9 & 10 <i>W. 3, c. 25, f. 26.</i>
Copy _____	0 0 1 5 <i>W. & M. c. 21, f. 3.</i>
And _____	0 0 1 9 & 10 <i>W. 3, c. 25, f. 40.</i>
And _____	0 0 1 32 <i>Geo. 2, c. 35, f. 8.</i>
<i>Inventory exhibited in Ecclesiastical, Admiralty, or } Cinque-port courts _____</i>	0 0 6 5 <i>W. & M. c. 21, f. 3.</i>
And _____	0 0 6 9 & 10 <i>W. 3, c. 25, f. 36.</i>
Copy thereof _____	0 0 6 5 <i>W. & M. c. 21, f. 3.</i>
And _____	0 0 6 9 & 10 <i>W. 3, c. 25, f. 36.</i>
<i>Judgment signed in any court at Westminster _____</i>	0 2 6 5 <i>W. & M. c. 21, f. 3.</i>
And _____	0 2 6 9 & 10 <i>W. 3, c. 25, f. 22.</i>
<i>Kalendar. See Almanack.</i>	

		<i>l. s. d.</i>	
Lading Bill	_____	0 0 4	9 <i>Ann. c. 23, f. 3.</i>
Latitat	_____	0 0 6	5 <i>W. & M. c. 21, f. 3.</i>
And	_____	0 0 6	9 & 10 <i>W. 3, c. 25, f. 31.</i>
And	_____	0 0 6	12 <i>Geo. 2, c. 33, f. 2.</i>
Leafe. See Deed.			
Letters patent, letters of attorney and administration. See Brief, County Palatine, Administration, Attorney.			
Letters of mart	_____	0 5 0	5 <i>W. & M. c. 21, f. 3.</i>
And	_____	0 5 0	9 & 10 <i>W. 3, c. 25, f. 18.</i>
And	_____	0 5 0	12 <i>Ann. ft. 2, c. 9, f. 21.</i>
Libel and copy thereof pays	_____	0 0 6	5 <i>W. & M. c. 21, f. 3.</i>
And	_____	0 0 6	9 & 10 <i>W. 3, c. 25, f. 36.</i>
Licence by an ecclesiastical court, or ordinary	_____	0 5 0	5 <i>W. & M. c. 21, f. 3.</i>
And	_____	0 5 0	9 & 10 <i>W. 3, c. 25, f. 14.</i>
And	_____	0 5 0	12 <i>Ann. ft. 2, c. 9, f. 21.</i>
By the Presbytery in Scotland, except to tutors and schoolmasters	_____	0 5 0	12 <i>Ann. ft. 2, c. 9, f. 21.</i>
Licence of marriage exempt from the duties granted by 9 & 10 <i>W. 3, c. 25, f. 53.</i> Penalties for marrying without licence, or bans in England, 7 & 8 <i>W. 3, c. 35, f. 1, 2, 3.</i> 10 <i>Ann. c. 19, f. 176, 177, 178.</i>			
Or for being so married, 7 & 8 <i>W. 3, c. 35, f. 4.</i>			
Licence for retailing wine	_____	0 4 0	9 <i>Ann. c. 23, f. 23.</i>
And where no other licence is taken out	_____	5 0 0	30 <i>Geo. 2, c. 19, f. 1.</i>
Where a licence for retailing ale, &c. is taken out	_____	4 0 0	30 <i>Geo. 2, c. 19, f. 1.</i>
Where a licence for retailing spirituous liquors is taken out	_____	2 0 0	3 <i>Geo. 2, c. 19, f. 1.</i>
For retailing ale, &c.	_____	0 1 0	9 <i>Ann. c. 23, f. 23.</i>
Penalties on persons taking recognizances of sellers of ale without first causing stamp licences to be made out, 6 <i>Geo. 1, c. 21, f. 56.</i>			
Licences for keeping alehouses on the military roads in Scotland, exempted, 29 <i>Geo. 2, c. 12, f. 19.</i>			
Mandate. See Writ.			
Marriage licence or certificate. See Licence, Certificate.			
Marshal court. See Process.			
Matriculation	_____	0 1 0	5 <i>W. & M. c. 21, f. 3.</i>
And	_____	0 1 0	9 & 10 <i>W. 3, c. 25, f. 27.</i>
Monition, or personal decree in the Admiralty, or Cinque-ports. See Admiralty.			
Monition, or citation in the ecclesiastical courts, and copies of them	_____	0 0 6	5 <i>W. & M. c. 21, f. 3.</i>
And	_____	0 0 6	9 & 10 <i>W. 3, c. 25, f. 36.</i>
And	_____	0 0 6	12 <i>Geo. 1, c. 33, f. 3.</i>
News-papers. See Pamphlets.			
Nisi prius. See Postea.			
Notarial act	_____	0 0 6	5 <i>W. & M. c. 21, f. 3.</i>
And	_____	0 0 6	9 & 10 <i>W. 3, c. 25, f. 37.</i>
Novodamus in Scotland	_____	0 2 3	10 <i>Ann. c. 19, f. 100.</i>
Officers at sea pay the same as those at land, 6 & 7 <i>W. 3, c. 12, f. 6.</i> 9 & 10 <i>W. 3, c. 25, f. 36.</i>			
Orders. See Rules.			
Original writs. See Writ.			
Original instruments of surrender, or resignation of heritable rights; original retour of service of heirs, original fine; original instruments of surrender, or resignation; service or cognition of heirs in Scotland, pay	_____	0 2 3	10 <i>Ann. c. 19, f. 100.</i>
Palatine. See County.			
Pamphlets, and news papers of half a sheet or less, pay	_____	0 0 0 $\frac{1}{2}$	10 <i>Ann. c. 19, f. 101.</i>
Larger than half, not exceeding one sheet, pay	_____	0 0 1	11 <i>Geo. 1, c. 8, f. 14.</i>
And	_____	0 0 0 $\frac{1}{2}$	30 <i>Geo. 2, c. 19, f. 1.</i>
Larger than one sheet and not exceeding six in octavo, or twelve in quarto, or twenty in folio, pay 2s. for every sheet in one printed copy, 10 <i>Ann. c. 19, f. 101.</i>			

Clauses shewing how and under what penalties such papers are to be stamped before they are printed, 10 *Ann. c. 19, f. 104, 105.*

And printed copies to be brought to the office and entered, 10 *Ann. c. 19, f. 111.*

And under what penalties, 10 *Ann. c. 19, f. 112, 113.*

Pamphlets unfold, how to be cancelled, and the like number of sheets stamped duty free to be exchanged for them, 10 *Ann. c. 19, f. 114.*

What news-papers shall not be deemed pamphlets, &c. 11 *Geo. 1, c. 8, f. 13, 14, 15.*
l. s. d.

Pardons of crime, or forfeiture, reprieve, or relaxation } 2 0 0 5 *W. & M. c. 21, f. 3.*
from fine, corporal punishment, or other forfeiture

And all but circuit, or *Newgate* pardons, and every such } 2 0 0 9 & 10 *W. 3, c. 25, f. 3, 50.*
relaxation, &c. pay the farther sums of

And if the relaxation be of a fine, &c. above 100*l.* — 2 0 0 12 *Ann. st. 2, c. 9, f. 21.*

Parliament (acts of) proclamations, forms of prayer, acts of state, matters printed by either house of parliament, school books, books of piety, daily bills of goods exported and imported, and bills of mortality, are excepted, 10 *Ann. c. 19, f. 102.*

Passport — — — — — 0 0 6 5 *W. & M. c. 21, f. 3.*

And — — — — — 0 0 6 9 & 10 *W. 3, c. 25, f. 37.*

And — — — — — 0 0 6 12 *Ann. st. 2, c. 9, f. 21.*

Patents. See *Brief, Grant.*

Physicians admittance to the college, pays — 2 0 0 5 *W. & M. c. 21, f. 3.*

And — — — — — 2 0 0 9 & 10 *W. 3, c. 25, f. 9.*

And — — — — — 2 0 0 12 *Ann. st. 2, c. 9, f. 21.*

Pleadings in law, and copy thereof — 0 0 1 5 *W. & M. c. 21, f. 3.*

And — — — — — 0 0 1 9 & 10 *W. 3, c. 25, f. 38, 39.*

And — — — — — 0 0 1 32 *Geo. 2, c. 9, 10.*

Pleadings in equity — — — — — 0 1 0 5 *W. & M. c. 21, f. 3.*

And — — — — — 0 1 0 9 & 10 *W. 3, c. 25, f. 26.*

And copies — — — — — 0 0 1 32 *Geo. 2, c. 35, f. 8.*

And all pleadings in law and equity are to be writ as usual, 5 *W. & M. c. 21, f. 15.* 9 & 10 *W. 3, c. 25, f. 64.*

Policy of assurance in *England*, pays — 0 0 6 5 *W. & M. c. 21, f. 3.*

And — — — — — 0 0 6 9 & 10 *W. 3, c. 25, f. 37.*

And — — — — — 0 0 6 12 *Ann. st. 2, c. 9, f. 21.*

And if within the bills of mortality — — 0 2 4 { 10 *Ann. c. 26, f. 67, 68.*
3 *Geo. 1, c. 7, f. 1.*

Clauses for securing the payment of the duties on policies of assurance, 10 *Ann. c. 26, f. 71, 72, 73.*

Policy to be made out within three days after the assurance, on pain of 100*l.* 11 *Geo. 1, c. 30, f. 44.*

By stat. 5 *Geo. 3, c. 46, sect. 4, 5*, it is enacted, that from and after 5 *July, 1765*, where the properties of more than one *person*, &c. in a ship or cargo, or both, shall be assured for upwards of 100*l.* in the same policy, the policy is void, and the premium remains to the insurer; and in like manner, in case of any additional assurance not duly stamped; provided any number may be assured on one policy, with 5 stamps of 5*s.* each.

Postea — — — — — 0 2 6 5 *W. & M. c. 21, f. 3.*

And — — — — — 0 2 6 9 & 10 *W. 3, c. 25, f. 21.*

Copy thereof — — — — — 0 0 6 5 *W. & M. c. 21, f. 3.*

And — — — — — 0 0 6 9 & 10 *W. 3, c. 25, f. 35.*

Presentation, collation, or donation to a benefice above } 2 0 0 5 *W. & M. c. 21, f. 3.*
the yearly value of 10*l.* in the king's books, pays

Probate of wills, except from common seamen or soldiers, pays — } 0 5 0 5 *W. & M. c. 21, f. 3, 6.*

And — — — — — 0 5 0 9 & 10 *W. 3, c. 25, f. 19, 144.*

Process. See *Writ.*

Proctor's admittance. See *Admission.*

Procurator — — — — — 0 0 6 5 *W. & M. c. 21, f. 3.*

And — — — — — 0 0 6 9 & 10 *W. 3, c. 25, f. 37.*

And — — — — — 0 0 6 12 *Ann. st. 2, c. 9, f. 21.*

Protest — — — — — 0 0 6 5 *W. & M. c. 21, f. 3.*

And — — — — — 0 0 6 9 & 10 *W. 3, c. 25, f. 37.*

And — — — — — 0 0 6 12 *Ann. st. 2, c. 9, f. 21.*

Quo minus. See *Writ.*

Recognizance and Writs. See *Statute.*

Register of Degrees. See *Degrees.*

Rejoinder and Replication. See *Pleadings.*

Relaxation. See *Admiralty, Pardon.*

Release inrolled, pays _____

0 5 0 5 *W. & M. c. 21.*

Common releases, pay _____

0 0 6 5 *W. & M. c. 21, f. 3.*

And _____

0 0 6 9 & 10 *W. 3, c. 25, sect. 37.*

And _____

0 0 6 12 *Ann. st. 2, c. 9, f. 21.*

Reprieve. See *Pardon.*

Rules and orders in courts of Westminster, and copies thereof _____

0 0 6 5 *W. & M. c. 21, f. 3.*

And _____

0 0 6 9 & 10 *W. 3, c. 35, f. 34, 35.*

And _____

0 0 6 32 *Geo. 2, c. 35, f. 6, 7.*

Saisine in Scotland _____

0 2 3 10 *Ann. c. 19, f. 100.*

Scotch instruments are not charged with stamp duties previous to the Union, 5 Ann. c. 8. Article 16, 14.

Scotch instruments, what to pay, 10 Ann. c. 19, f. 100.

Scotch deeds, not charged with 2s. 3d. pay _____

0 0 6 12 *Ann. st. 2, c. 9, f. 21.*

Sentence in the ecclesiastical courts, and copies thereof, pay _____

0 0 6 5 *W. & M. c. 22, f. 3.*

And _____

0 0 6 9 & 10 *W. 3, c. 25, f. 36.*

Sentence in the Admiralty or Cinque-ports. See *Admiralty.*

Sewers proceedings pay nothing, 6 & 7 W. 3, c. 12, f. 2, 9; and 10 W. 3, c. 25, f. 45.

Significavit _____

0 5 0 5 *W. & M. c. 21, f. 3.*

And _____

0 5 0 9 & 10 *W. 3, c. 25, f. 16.*

Sign manual to any beneficial warrant or order, except warrants or orders for the service of the navy, army, ordinance, pay _____

0 2 6 5 *W. & M. c. 21, f. 3.*

And _____

0 2 6 9 & 10 *W. 3, c. 25, f. 24.*

And _____

0 2 6 12 *Ann. st. 2, c. 9, f. 21.*

South-Sea securities, exempt from duties, 3 Geo. 1, c. 9, f. 16. 5 Geo. 1, c. 19, f. 30. 6 Geo. 1, c. 4, f. 51.

Stannary proceedings exempt from stamp duties, 6 & 7 W. 3, c. 19, f. 2. 9 & 10 W. 3, c. 25, f. 45.

Statute-staple merchant or recognizance, pay _____

0 5 0 { 5 *W. & M. c. 21, f. 3.*

And _____

0 5 0 { 9 & 10 *W. 3, c. 25, f. 2.*

Provisoos exempting recognizances before justices of peace, 6 & 7 W. 3, c. 12, f. 2. 9 & 10 W. 3, c. 25, f. 45.

Subpœna. See *Writ.*

Surrender of grant, or office, inrolled, pays _____

0 5 0 { 5 *W. & M. c. 21, f. 3.*
9 & 10 *W. 3, c. 25, f. 52.*

Surrender of Copyholds. See *Copyholds.*

Surrender of heritable rights in Scotland, pays _____

0 2 3 10 *Ann. c. 19, f. 100.*

Testimonial. See *Degree.*

Transfer of stock _____

0 2 3 10 *Ann. c. 19, f. 100.*

And _____

0 4 6 12 *Ann. st. 2, c. 9, f. 21.*

Warrant from justices of peace pays nothing, 6 & 7 W. 3, c. 12, f. 2. 9 & 10 W. 3, c. 2, f. 45.

Wine-licence. See *Licence.*

Writ of Habeas corpus, pays _____

0 5 0 5 *W. & M. c. 21, f. 3.*

But is exempted from further duties, 9 & 10 W. 3, c. 25, f. 31, 56. 12 Geo. 1, c. 33, f. 2.

Writ of Certiorari, pays _____

0 5 0 5 *W. & M. c. 21, f. 3.*

And _____

0 5 0 9 & 10 *W. 3, c. 25, f. 15.*

And _____

0 0 6 12 *Geo. 1, c. 33, f. 2.*

Writ of Appeal, except to the delegates, pays _____

0 5 0 5 *W. & M. c. 21, f. 3.*

And _____

0 5 0 9 & 10 *W. 3, c. 25, f. 15.*

And _____

0 0 6 12 *Geo. 1, c. 33, f. 2.*

Writ of Covenant for levying a fine, pays _____

0 5 0 5 *W. & M. c. 21, f. 3.*

But is exempt from further duties, 9 & 10 W. 3, c. 25, f. 31, 54. 12 Geo. 1, c. 33, f. 2.

Writ

Writ of entry for suffering a common recovery, pays	0 5 0	5 <i>W. & M. c. 21, f. 3.</i>
But is exempt from further duties, 9 & 10 <i>W. 3, c. 25, f. 31, 55.</i>		12 <i>Geo. 1, c. 33, f. 2.</i>
Writ of Error, pays	0 5 0	5 <i>W. & M. c. 21, f. 3.</i>
And	0 5 0	9 & 10 <i>W. 3, c. 25, f. 15.</i>
Every other writ original, except such on which a capias issues subpœna, bill of <i>Middlesex</i> , latitat, capias, quo minus, dedimus potestatem, and every other writ, process or mandate of courts holding plea of 40s. pays	0 0 6	5 <i>W. & M. c. 21, f. 3.</i>
And	0 0 6	9 & 10 <i>W. 3, c. 25, f. 31.</i>
And	0 0 6	{ 12 <i>Geo. 1, c. 33, f. 2.</i> 9 <i>Geo. 2, c. 32, f. 7.</i>
And	0 0 6	32 <i>Geo. 2, c. 35, f. 7.</i>
Writs of covenant, writs of entry, and writs of <i>habeas corpus</i> excepted, 32 <i>Geo. 2, c. 25, f. 7.</i>		

2. Clauses concerning the officers for the management of the stamp duties.

Such officers how to be sworn, 5 *W. & M. c. 21, f. 12.* 9 & 10 *W. 3, c. 25, f. 60, 61.*
8 *Ann. c. 9, f. 42.* 9 *Ann. c. 23, f. 29.* 10 *Ann. c. 19, f. 106, 122, & c. 26, f. 75.* 12
Ann. fl. 2, c. 9, f. 26. 12 *Geo. 1, c. 33, f. 9.*

And how to account, 5 *W. & M. c. 21, f. 24.*

What commissioners are to levy the duties granted by the several statutes, 5 *W. & M. c. 21, f. 7.* 9 & 10 *W. 3, c. 25, f. 48.* 9 *Ann. c. 23, f. 48.* 10 *Ann. c. 19, f. 103, 124, & c. 26, f. 77.* 12 *Ann. fl. 2, c. 9, f. 23, 29.* 12 *Geo. 1, c. 33, f. 4.* 30 *Geo. 2, c. 19, f. 16, 17.*

How to obey the orders of the Treasury, 5 *W. & M. c. 21, f. 13.* 9 & 10 *W. 3, c. 25, f. 62.*
8 *Ann. c. 9, f. 44.* 9 *Ann. c. 23, f. 30.* 10 *Ann. c. 19, f. 170.* 30 *Geo. 2, c. 19, f. 24.*

And where to keep their head office, 10 *Ann. c. 19, f. 181.*

How punishable for misapplying or detaining their monies in their hands. 9 *Ann. c. 21, f. 11*
& c. 23, f. 48. 30 *Geo. 2, c. 19, f. 25.*

And how to furnish all parts of the kingdom with stamped vellum, &c. 5 *W. & M. c. 21, f. 13.*
9 & 10 *W. 3, c. 25, f. 62.* 9 *Ann. c. 23, f. 35.* 10 *Ann. c. 19, f. 116.* 30 *Geo. 2, c. 19, f. 20.*

And how to mark the price set by the Treasury on stamped vellum, &c. 6 & 7 *W. 3, c. 12, f. 9.* 9 & 10 *W. 3, c. 25, f. 68.* 9 *Ann. c. 23, f. 36.* 10 *Ann. c. 19, f. 117.*

And to stamp vellum, &c. without fee on payment of the duties, 5 *W. & M. c. 21, f. 9.*
9 & 10 *W. 3, cap. 25, f. 59.*

And what allowance to make for prompt payment, 6 & 7 *W. 3, c. 12, f. 9.* 1 *Ann. fl. 2, c. 22, f. 7.* 9 *Ann. c. 23, f. 36.* 10 *Ann. c. 19, f. 117.* 12 *Ann. fl. 2, c. 9, f. 27.* 12
Geo. 1, c. 33, f. 6.

Judges to make orders at the request of the commissioners for the better securing the duties,
5 *W. & M. c. 21, f. 12.* 9 & 10 *W. 3, c. 26, f. 60.*

Such commissioners with a comptroller continued for ever, 9 & 10 *W. 3, c. 44, f. 43.* 9 *Ann. cap. 21, sect. 12.*

Inspectors in courts and offices, 5 *W. & M. cap. 21, f. 12.* 9 & 10 *W. 3, c. 25, f. 60.*

And other inferior officers, to be appointed by the commissioners, 5 *W. & M. cap. 21, f. 7.*
9 & 10 *W. 3, c. 25, f. 48.* 8 *Ann. c. 9, f. 33.*

Penalties on persons hindering such inspectors from inspecting books which may discover frauds,
9 *Ann. c. 23, sect. 28.*

And on collectors detaining and misapplying monies in their hand, 9 & 10 *W. 3, c. 44, f. 45.*
9 *Ann. c. 21, sect. 14.*

And on commissioners not duly paying monies into the Exchequer, 9 & 10 *W. 3, c. 44, f. 42.*

And on officers stamping vellum, &c. before the duty is paid, 5 *W. & M. c. 21, f. 10.*

Salaries of the officers how to be paid out of the duties, 5 *W. & M. c. 21, f. 22.* 9 & 10
W. 3, c. 25, f. 66. 8 *Ann. c. 9, f. 33.* 12 *Geo. 1, c. 33, f. 5.*

3. General

3. General clauses relating to and enforcing the payment of stamp duties.

Stamps how to be provided and altered from time to time, 5 *W. & M. c. 21, f. 7.* 8 *Ann. c. 9, f. 36.*

Suits of paupers excepted from duties, 5 *W. & M. c. 21, f. 14.* 12 *Geo. 1, c. 23, f. 5.*

Probate of wills of seamen and soldiers excepted, 5 *W. & M. c. 21, f. 6.*

And the alteration how to be proclaimed, 5 *W. & M. c. 21, f. 7.* 9 & 10 *W. 3, c. 25, f. 67.*

9 *Ann. c. 23, f. 33.* 10 *Ann. c. 19, f. 110.*

And the proclamation judicially taken notice of by the judges, 10 *Ann. c. 19, f. 180.*

Vellum, &c. how to be marked with such stamps, 5 *W. & M. c. 21, f. 9.* 9 & 10 *W. 3, c. 25, f. 49.* 8 *Ann. c. 9, f. 36.* 9 *Ann. c. 23, f. 25.*

And how on the alteration of the stamp, the parties that have vellum, &c. marked with the old stamp, are to be supplied with vellum, &c. stamped with a new stamp, without fee, 5 *W. & M. c. 21, f. 16.* 9 & 10 *W. 3, c. 25, f. 65.* 9 *Ann. c. 23, f. 32.* 10 *Ann. c. 19, f. 109.* 12 *Geo. 1, c. 33, f. 8.*

Instruments written on paper not duly stamped, shall be of no avail in law till stamped, and the penalties paid, 5 *W. & M. c. 21, f. 11.* 9 & 10 *W. 3, c. 25, f. 59.* 9 *Ann. c. 23, f. 27.* 10 *Ann. c. 19, f. 105, & c. 26, f. 71.* 12 *Ann. f. 2, c. 9, f. 25.* 12 *Geo. 1, c. 33, f. 8.*

Instruments and writing, charged with stamp duties, shall be writ as usual, 5 *W. & M. c. 21, f. 15.* 9 & 10 *W. 3, c. 25, f. 64.*

Several matters charged severally by 12 *Ann.* written on one piece of paper, &c. shall be charged severally, 12 *Ann. ft. 2, c. 9, f. 24.*

Penalties on persons writing instruments on paper, &c. not stamped, 5 *W. & M. c. 21, f. 11.* 6 & 7 *W. 3, c. 12, f. 7, 8.* 9 & 10 *W. 3, c. 25, f. 59.* 9 *Ann. c. 23, f. 27.* 10 *Ann. c. 26, f. 11.* 12 *Ann. f. 2, c. 9, f. 25.* 12 *Geo. 1, c. 33, f. 8.*

On writing a new instrument, &c. on stamp paper, &c. whereon a former was before written, or tearing off a mark from one writing with an intent to use it on another, 1 *Ann. ft. 2, c. 22, f. 2.*

Or on putting some part of the writing charged with stamp duties either on, or as near the stamps as may be, 1 *Ann. ft. 2, c. 22, f. 5.*

And on officers neglecting to enter or file actions, complaints, bails, appearances, admissions, or other proceedings, 1 *Ann. ft. 2, c. 22, f. 1, 3.* 5 *Ann. c. 19, f. 29.*

Penalty of 5*l.* for selling unstamped cards or dice, or using them in gaming houses, 10 *Ann. c. 19, f. 162.*

Penalty on defacing the stamp on cards, and new spotting dice, 6 *Geo. 1, c. 21, f. 55.*

Penalty on not making out ale licences duly stamped, 6 *Geo. 1, c. 21, f. 56.* 29 *Geo. 2, c. 2, f. 12.*

Penalties in the stamp acts to relate to subsequent duties, 6 *Geo. 1, c. 21, f. 56.*

The day of suing out a writ shall be inforced on the warrant, 6 *Geo. 1, c. 21, f. 54.*

Penalty on making insurance without stamps, 11 *Geo. 1, c. 30, f. 44.*

Hawkers of unstamped news papers to be sent to the house of correction, 16 *Geo. 2, c. 26, f. 5.*

Penalties how disposed of, 1 *Ann. ft. 2, c. 22, f. 6.* 9 *Ann. c. 23, f. 37.* 10 *Ann. c. 19, f. 119.*

How to be mitigated by justices of peace, 10 *Ann. c. 19, f. 120, 173.*

Proceedings before such justices not to be superseded by *certiorari*, 10 *Ann. c. 19, f. 174.*

Provisoos in favour of paupers, 5 *W. & M. cap. 21, f. 14.* 9 & 10 *W. 3, c. 25, f. 63.* 12 *Geo. 1, c. 33, sect. 7.*

And of those that write things without a stamp on a book or roll licensed by the commissioners, 1 *Ann. ft. 2, c. 22, f. 4.*

Counterfeiting stamps or procuring paper to be marked with counterfeit stamps, &c. where felony, 5 *W. & M. c. 21, f. 11.* 9 & 10 *W. 3, c. 25, f. 59.* 8 *Ann. c. 9, f. 41.* 9 *Ann. c. 25, f. 34.* 10 *Ann. c. 19, f. 115, & c. 26, f. 72.* 6 *Geo. 1, c. 21, f. 60.* 29 *Geo. 2, c. 12, f. 21; c. 13, f. 5.* 30 *Geo. 2, c. 19, f. 27.* 32 *Geo. 2, c. 35, f. 17.*

Stamp duties not to extend to licences by commissioners of excise, 29 *Geo. 2, c. 12, f. 25.*

4. Clauses

4. *Clauses for the security of those who advanced money to the credit of the stamp duties.*

Such creditors how to be paid, 5 *W. & M. c. 21, f. 17, &c.* 8 & 9 *W. 3, c. 20, f. 12, 13.* 3 *Ann. c. 9, f. 46, 47, 48.* 9 *Ann. c. 21, f. 8, 9, 10, 11, 13, 14, 15.*

Stamp duties how appropriated, 9 *Ann. c. 23, f. 54.* 10 *Ann. c. 19, f. 125.* 30 *Geo. 2, c. 19, f. 31.*

Distinct accounts how to be kept of the payments, 5 *W. & M. c. 21, f. 18, 19.* 9 & 10 *W. 3, c. 44, f. 40, 44.* 5 *Ann. c. 19, f. 7, 13, 14.* 8 *Ann. c. 9, f. 34.* 9 *Ann. c. 21, f. 9, 10, 13, & c. 23, f. 31.* 10 *Ann. c. 19, f. 108.* 12 *Geo. 1, c. 33, f. 11.* And registered, 5 *W. & M. c. 21, f. 19.* 9 & 10 *W. 3, c. 44, f. 44.*

And paid annually, 1 *Ann. st. 2, c. 22, f. 8.*

And the arrears set *insuper* on the parties chargeable therewith, 1 *Ann. st. 2, c. 22, f. 9.*

But not on any person not duly charged, on pain of treble damages, 1 *Ann. st. 2, c. 22, f. 11.*

The stock of paper and vellum, &c. to be set on the foot of the account, 1 *Ann. st. 2, c. 22, f. 10.*

Clauses concerning the continuance of stamp duties, 9 & 10 *W. 3, c. 25, f. 1.* 1 *Ann. st. 1, c. 13, f. 11, 12.* 5 *Ann. c. 19, f. 3, 4.* 6 *Ann. c. 5, f. 4, 6, & c. 17, f. 6.*

And declaring them to be redeemable by parliament, 9 & 10 *W. 3, c. 25, f. 47, & c. 44, f. 79.* 6 *Ann. c. 17, f. 6.* 9 *Ann. c. 21, f. 24.*

Stock (of Companies.)

STAT. 8 *Geo. 2, c. 22, [A. D. 1721.] Made among other purposes,* “to prevent the mischiefs by forging powers to transfer stocks, or to receive such annuities or dividends as are therein mentioned, or by fraudulently personating the true owners thereof.”

Preamble.

“Whereas of late divers frauds and abuses have been committed by forging and counterfeiting the hands of some of the proprietors of the shares of and in the capital stock and funds of such body or bodies politick or corporate, as are established by act or acts of parliament in that behalf, or some of them, or by forging or counterfeiting the hands of persons entitled to the dividends attending the said shares, or some of them, or by forging or counterfeiting the hands of persons entitled to annuities, in respect whereof the proprietors have transferrable shares in a capital stock or stocks, established by act or acts of parliament, in proportion to their respective annuities; and divers frauds and abuses have been or may be committed by persons falsely and deceitfully personating the true and real proprietors of the said shares in stock, annuities and dividends, or some of them: Now for the better preventing such pernicious practices for the future, Be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same,

After 1 March
1721, forging
letters of at-
torney, &c.

fame, That if any person or persons whatsoever, from and after the first day of *March*, one thousand seven hundred and twenty-one, shall forge or counterfeit, or procure to be forged or counterfeited, or knowingly and wilfully act or assist in the forging or counterfeiting any letter of attorney, or other authority or instrument, to transfer, assign, sell, or convey any such share or shares, or any part of such share or shares, of and in such capital stock or stocks, as aforesaid, or any of them, or to receive any such annuity or annuities, dividend or dividends, as aforesaid, or any of them, or any part thereof, or shall forge or counterfeit, or procure to be forged, or counterfeited, or knowingly and wilfully act or assist in the forging or counterfeiting any the name or names of any the proprietors of any such share or shares in stock, or of any the persons entitled to any such annuity or annuities, dividend or dividends, as aforesaid, or to any such pretended letter of attorney, instrument, or authority, or shall knowingly and fraudulently demand, or endeavour to have any such share or shares in stock, or any part thereof, transferred, assigned, sold, or conveyed, or such annuity or annuities, dividend or dividends, or any part thereof, to be received by virtue of any such counterfeit or forged letter of attorney, authority, or instrument, or shall falsely and deceitfully personate any true and real proprietors of the said shares in stock, annuities and dividends, or any of them, or any part thereof, and thereby transferring or endeavouring to transferr the stock, or receiving or endeavouring to receive the money of such true and lawful proprietor, as if such offender were the true and lawful owner thereof, then and in every or any such case, all and every such person and persons (being thereof lawfully convicted in due form of law) shall be adjudged guilty of felony, and shall suffer as in cases of felony, without benefit of clergy.

or counter-
feiting names
of proprie-
tors, &c.

or falsely per-
sonating real
proprietors of
shares, &c.
felony.

Stocks.

IT is said, that every vill of common right it bound to provide a pair of stocks. 2 *Hawk. P. C.* 73. And the constable by the common law, may confine offenders in the stocks, by way of security, but not by way of punishment. But by divers statutes, the stocks is also appointed for the punishment of offenders in sundry cases, after conviction.

Stores.

STAT. 31 *Eliz. c. 4*, [*A. D.* 1789, *intituled*] “An act against the imbezelling of armour, habiliments of war, and victual.”

VOL. III. N°. CV.

6.D

“Be

Imbezelling the queen's ordnance, armour or victuals, to the value of twenty shillings, provided for soldiers, shall be felony.

3 Inst. 79.

Within what time the offender shall be impeached.

No corruption of blood, nor forfeiture of the inheritance of lands or dower for this felony.

3 Inst. 47.

The defendant may bring proof of his discharge.

“Be it it enacted by the authority of this present parliament, That if any person or persons having at any time hereafter the charge or custody of any armour, ordnance, munition, shot, powder or habiliments of war, of the queen's majesty's, her heirs or successors, or of any victuals provided for the victualling of any soldiers, gunners, mariners, or pioneers, shall for any lucre or gain, wittingly, advisedly, and of purpose, to hinder or impeach her majesty's service, imbezel, purloin, or convey away any of the same armour, ordnance, munition, shot or powder, habiliments of war, or victuals, to the value of twenty shillings, at one or several times, that then every such offence shall be judged felony, and the offender or offenders therein to be tried, proceeded on, and suffer as in case of felony.

Seet. 2. “Provided always, and be it enacted by the authority aforesaid, That none shall be impeached for any offence against this statute, unless the same impeachment be prosecuted or begun within the year next after the offence done: (2) and that this act, nor any thing therein contained, nor any attainder or attainders of any person or persons, for any offence made felony by this act, shall in any wise extend to or be adjudged, interpreted or expounded, to make the offender or offenders to forfeit or lose any lands, tenements, or hereditaments any longer than only during his or their life or lives, or to make any corruption of blood to any the heir or heirs of any such offender or offenders, or to make the wife of any such offender to lose or forfeit her dower, or title of dower, of or in any lands, tenements or hereditaments, or her action or interest to the same; any thing in this act contained, or any attainder or attainders hereafter to be had for any offence made felony by this act, to the contrary notwithstanding: (3) and that such person and persons as shall be impeached for any offence made felony by this estatute, shall by virtue of this act be received and admitted to make any lawful proof that he can, by lawful witness or otherwise, for his discharge and defence in that behalf; any law to the contrary notwithstanding. Enforced, and clergy taken away, by 22 Ca. 2, c. 5.

STAT. 9 & 10 Will. 3, c. 14. [A. D. 1698,] *Made, among other purposes,* “for the better preventing the imbezlement of his majesty's stores of war.”

“Whereas notwithstanding divers good laws made and enacted, for the preventing of the stealing and embezzlement of his majesty's stores of war, and naval stores, those frauds, thefts, and imbezlements are frequently practised, and the convicting of such offenders is rendered difficult and impracticable, by reason it rarely happens that direct proof can be made of such offender's immediate taking, imbezling, or carrying away any of his majesty's said stores of war and naval stores, out of or from his majesty's storehouses, docks, yards, ships, ordnance, or other places for keeping and preserving the same, but only that such goods are marked with the king's mark, and found in the custody and possession of the said person accused for stealing or imbezling the same, to the great encourage-

ment of such wicked offenders, and to his majesty's and the kingdom's great damage: for preventing such said imbezlements for the future, and for the more effectual execution of the laws and statutes already in force against such imbezlements and thefts, be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in parliament assembled, and by the authority of the same, That from and after the four and twentieth day of June, one thousand six hundred ninety-eight, it shall not be lawful to or for any person or persons whatsoever, other than persons authorized by contracting with his majesty's principal officers or commissioners of the navy, ordnance, or victualling office for his majesty's use, to make any stores of war or naval stores whatever, with the marks usually used to and marked upon his majesty's said warlike and naval or ordnance stores; that is to say, any cordage of three inches and upwards, wrought with a white thread laid the contrary way, or any smaller cordage, to wit, from three inches downwards with a twine in lieu of a white thread laid to the contrary way, as aforesaid, or any canvas wrought or unwrought, with a blue streak in the middle, or any other stores with the broad arrow, by stamp, brand, or otherwise, upon pain that every such person or persons, who shall make such goods so marked, as aforesaid, not being a contractor with his majesty's principal officers or commissioners of the navy, ordnance, or victuallers for his majesty's use, or imployed by such contractor for that purpose, as aforesaid, shall, for every such offence, forfeit such goods, and the sum of two hundred pounds, together with costs of suit; one moiety whereof shall be to his majesty, and the other moiety to the informer, to be recovered by action of debt, bill, plaint, or information, in any of his majesty's courts of record at *Westminster*, wherein no essoin, privilege, protection, wager of law, injunction, or order of restraint, nor more than one imparlance shall be allowed.

Sec. 2. " And be it further enacted by the authority aforesaid, That such person or persons, in whose custody, possession, or keeping such goods or stores, marked as aforesaid, shall be found, not being imployed, as aforesaid, and such person or persons who shall conceal such goods or stores, marked as aforesaid, being indicted and convicted of such concealment, or of the having such goods found in his custody, possession, or keeping, shall forfeit such goods, and the sum of two hundred pounds, together with the costs of prosecution; one moiety to his majesty, and the other moiety to the informer, to be recovered, as aforesaid, and shall also suffer imprisonment, until payment and performance of the said forfeiture, unless such person shall, upon his trial, produce a certificate under the hand of three or more of his majesty's principal officers or commissioners of the navy, ordnance, or victuallers, expressing the numbers, quantities, or weights of such goods, as he or she shall then be indicted for, and the occasion and reason of such goods coming to his or her hands or possession.

No warlike or naval stores, except for the king's use, shall be made with the king's marks, &c.

Penalty on person in whose custody such marked stores are found, &c.

Unless he produce a certificate, &c.

By 9 Geo. 1, c. 8, s. 3 & 4.

The penalty of this act may be mitigated.

Stores.

By stat. 1 *Geo.* 1, stat. 2, c. 25, sect. 6, person counterfeiting a naval officer's hand, whereby his majesty's naval treasure may be disposed of, shall find surety to appear at the sessions, to be proceeded against according to law. See *Seamen*.

STAT. 9 *Geo.* 1, c. 8. [*A. D.* 1722.] *Made, among other purposes, "for the preservation of naval stores, and stores of war."*

9 & 10 *W.* 3, 41. And whereas, by an act made in the ninth and tenth years of the reign of his late majesty king *William* the third, intituled, *An act for the better preventing the imbezlement of his majesty's stores of war, and preventing cheats, frauds, and abuses in paying seamen's wages*, a penalty of two hundred pounds, with costs of prosecution and pain of imprisonment, is inflicted upon persons having in their custody, possession, or keeping, or concealing contrary to the said act, any warlike, naval, or ordnance stores therein mentioned, or any other stores marked with the broad arrow, by stamp, brand, or otherwise: and whereas it is necessary to give power to mitigate the said penalties, and to explain and amend the said act, be it enacted by the authority aforesaid, That if any person or persons shall, after the five and twentieth day of *March*, one thousand seven hundred and twenty-three, be lawfully convicted of having in his, her, or their custody, any timber, thick stuff, or plank, marked with the broad arrow, by stamp, brand, or otherwise, or of concealing any timber, thick stuff, or plank, so marked, every such person so offending shall suffer, forfeit, and pay, as for having, keeping, or concealing any other warlike, naval, or ordnance stores, contrary to the said act.

Seet. 4. "Provided always, and it is hereby further enacted, That it shall be lawful to and for any judge, justice, or justices, before whom any offender or offenders shall be convicted of any of the crimes or offences before recited, enacted, or mentioned in this act, to mitigate the penalty for the same, as he or they shall see cause, and to commit the offender or offenders so convicted, to the common gaol of the county or place where the offence shall be committed, there to remain without bail or mainprize, until payment be made of the penalty and forfeiture imposed by this or the said former act, or mitigated, as aforesaid, or to punish such offender or offenders corporally, by causing him, her, or them to be publicly whipped, or committed to some publick workhouse, there to be kept to hard labour, for the space of six months, or a less time, as to such judge, justice, or justices, in his or their discretion shall seem meet; any thing in the said recited act, or in any other act, to the contrary notwithstanding.

STAT. 17 *Geo.* 2, c. 40, [*A. D.* 1744.] *Made, among other purposes, "to explain two acts relating to the prosecution of offenders for imbezeling naval stores, or stores of war."*

Stat. 10, recites the said acts of 9 *Will. 3*, c. 41, and 9 *Geo. 1*, c. 8, and then proceeds thus, "And whereas some doubts have arisen touching the method of trial and punishment of offenders against the said recited acts, whether as the said acts, are worded, such offender or offenders may be indicted and tried for the crimes and offences in the said acts mentioned, and whether any judge, justice or justices of assize, or justices of peace at the sessions, may hear, try and determine the same, and on conviction, set such fine, or mitigate the same, and the forfeitures and penalties inflicted by the aforesaid acts, on such offender or offenders, as the nature of the offences may deserve; or whether such offenders as aforesaid, in order for recovering the said forfeitures and penalties inflicted by the said act, can only be proceeded against by action of debt, bill, plaint, or information, in some of his majesty's courts of record at *Westminster*; by reason of which doubts, it has so happened, that offenders against the said recited acts, having been indicted for the same, have escaped unpunished, to the great encouragement of such offenders and others, to commit the like crimes and offences for the future; for the remedying whereof, and for explaining the acts above mentioned, it is hereby declared and enacted, that it shall and may be lawful to and for any judge, justice or justices at the assizes, or justices of the peace at the general quarter-sessions to be holden for any county, city, borough or town corporate, to hear, try and determine, by indictment or otherwise, all or any the crimes or offences mentioned in the said recited acts; and that the said judge, justice or justices of assize, or justices of peace as aforesaid, before whom such offender or offenders shall be indicted, or tried and convicted of all or any the crimes or offences in the said recited acts mentioned, may impose any fine, not exceeding the sum of two hundred pounds, on such offender or offenders; one moiety to be paid to his majesty, and the other moiety to the informer; and may mitigate the said penalty and forfeitures, inflicted by the said recited acts, or either of them, and to commit the offender or offenders so convicted and fined, to the common gaol of the county or place where the offence shall be committed; there to remain without bail or mainprize, until payment be made of the penalty and forfeitures imposed by this or the said former acts, or mitigated as aforesaid; or in lieu thereof, to punish such offender or offenders in the premises corporally, by causing him, her or them to be publicly whipped, and committed to some house of correction, or publick workhouse, there to be kept to hard labour for the space of three months, or less time, as to such judge, justice, or justices of assize, or justices of the peace, shall in his or their discretion seem meet; any thing in the said recited acts, or in any other act to the contrary notwithstanding.

Justices of assize, or quarter-sessions, may try offences, relating to the stores, &c.

Surety

Surety of the Peace.

SURETY OF THE PEACE, (*securitas pacis*, so-called, because the party that was in fear, is thereby secured,) is an acknowledging of a bond to the prince, taken by a competent judge of record, for the keeping of the peace. This peace a justice of the peace may command, either as a minister, when he is commanded thereto by a higher authority; or as a judge, when he doth it of his own power, derived from his commission. Of both these, see *Lamb. Eiren*, lib. 2, cap. 2, p. 77. *Corwell*, edit. 1727.

A justice of peace may, according to his discretion, bind all those to keep the peace, who, in his presence, shall make any affray, or shall threaten to kill or beat any person, or shall contend together with hot words; and all those who shall go about with unusual weapons or attendance, to the terror of the people; and all such persons as shall be known by him to be common barrators; and all who shall be brought before him by a constable, for a breach of the peace in the presence of such constable; and all such persons who, having been before bound to keep the peace shall be convicted of having forfeited their recognizance. *Lamb.* 77, 78. *Bro. Peace*, pl. 7, 8. 1 *Hawk.* 126.

All persons under the king's protection, being of sane memory whether they are natural born subjects or aliens; good subjects or attainted of treason or some other crime, have a right to demand surety of the peace. *Lamb.* 78, 79, 80. 1 *Hawk.* 126.

But it has been questioned whether Jews, pagans, or persons attainted of premunire, have a right to it? *Lamb.* 80. 1 *Hawk.* 126.

A wife may demand surety of the peace against her husband, if he threatens to beat her outrageously, or to kill her. *Fitzb. N. B.* 80. *Lamb.* 8. 2 *Leo.* 128. 1 *Hawk.* 127.

A woman exhibited articles of the peace, styling herself the wife of the defendant, setting out acts of cruelty, and the pendency of a suit in the ecclesiastical court for the restitution of conjugal rights. When the defendant came to put in bail, he insisted, that the recognizance should not be taken so as to carry with it any admission of the marriage: and the court ordered it to run thus; to keep the peace towards our sovereign lord the king and all his leige people, and particularly towards *Hannah Penn*, who hath exhibited articles of the peace against him the said *James Bambridge*, by the name of *Hannah Bambridge*, wife of him the said *James*, &c. *Str.* 1231. *Rex v. Bambridge*.

Articles of the peace may be exhibited by a husband against his wife. *Str.* 1207. *Sims's case*, 1 *Hawk.* 127.

Surety of the peace is usually granted at the request of some one person, for the fear of one man can scarce ever be the fear of another; and, if it is demanded against two or more, each ought to enter into a separate recognizance for keeping the peace. *Pult.* 18.

Surety of the peace may be had against every person whatsoever, being of sane memory, whether he is peer or commoner; magistrate or private person; of full age or under age. *Lamb.* 81. *1 Hawk.* 127.

But infants and feme covert's ought to find surety by their friends, and not to be bound themselves. *1 Hawk.* 127.

Whenever a person has just cause to fear that another will burn his house; or do him some corporal hurt, as by killing or beating him; or that he will procure others to do him such mischief, he may demand the surety of the peace against such person. *Lamb.* 82. *1 Hawk.* 127. *Str.* 473.

It is said that surety of the peace shall not be granted for fear of imprisonment; because damages may be recovered in an action of false imprisonment. *Bro. Peace,* pl. 22.

But the better opinion is that it may; for every unlawful imprisonment is an assault and injury. The reason given, that an action will lie, is no more conclusive in this case than in the case of a battery; and yet there is no doubt but surety of the peace may be granted for threatening to beat. *Lamb.* 83. *1 Hawk.* 127.

Surety of the peace may be demanded by a wife, if her husband gives her unreasonable correction. *Mo.* 874. *Sir Thomas Seymour's case.* *Godb.* 215. *Fitz. N. B.* 80.

Some persons having made a disturbance in a church, and pulled the minister, who was reading the common prayer out of the desk, an attachment of the peace was, on exhibiting articles in the court of King's-bench, issued out against them. *1 Keb.* 290. *Rex v. Douglas.*

But surety of the peace ought not to be granted to a man for fear of danger to his servant or cattle. *Lamb.* 83.

It hath however been said, that a man may have the surety of the peace against one who threatens to hurt his wife or child. *Dalt.* 266.

The surety of the peace ought not to be granted for any past battery, unless there is a fear of some present or future danger: but the offender must in such case be punished by action or indictment. *Dalt.* 266.

The demand of the surety of the peace ought to be soon after the cause of fear; for the suffering much time to pass, before it is demanded, shews that the party has been under no great terror. *6 Mod.* 132. *The Queen, v. Lane.*

Of granting surety of the peace, by a justice of the peace:

A justice of the peace may grant the surety of the peace, under the authority of the commission of the peace, by which he is empowered to cause to come before him all those, who to any one or more of our people, concerning their bodies or the firing of their houses have used threats, to find sufficient security for the peace, or their good behaviour, towards us and our people; and if they shall refuse to find such security, then them in our prisons, until they shall find such security, to cause to be safely kept. *Lamb.* 36.

Whenever

Surety of the Peace.

Whenever oath is made before a justice of peace by any person, that he is actually under fear that another will burn his house, or do or procure to be done to him some corporal hurt, and that he does not crave the surety of the peace through malice, but for the safety of his life, the justice is bound to grant it. *Lamb. 83. F. N. B. 79. 1 Hawk. 127.*

But if the security of the peace is desired against a peer, the safest way is to apply to the court of Chancery or King's-bench. *1 Hawk. 127. Lamb. 81.*

If the person against whom it is demanded, be present, the justice of the peace may commit him immediately, unless he offers sureties; and *a fortiori* he may be commanded to find sureties, and be committed for not doing it. *Bro. Mainp. pl. 39. 1 Hawk. 127.*

But if he is absent, a warrant for committing him cannot be granted till a warrant has issued commanding him to find sureties; and this warrant, which must be under seal, ought to shew the cause for which it is granted, and at whose suit. *Lamb. 85. 1 Hawk. 128.*

The justice of the peace, who grants this last mentioned warrant, may in this case make it special for bringing the party before himself only, for, as he has most knowledge of the matter, he is best qualified to do justice in it. *5 Co. 59. Foster's case. 1 Hawk. 128.*

But if the warrant be in general terms to carry the party before any justice of the peace, the officer, who executes it, has his election to carry him before what justice he pleases, and may carry him to gaol, by virtue of the same warrant, if he refuses to find sureties before such justice; for the warrant has these words in it, "if he shall refuse to find security," &c. *Bro. False impris. pl. 11. 1 Hawk. 128. 5 Co. 59.*

If one, however, who apprehends that the surety of the peace will be demanded against him, finds sureties before any justice of the peace of the same county, either before or after a warrant is issued against him, he may have a superseas from such justice; and this shall prevent or discharge him from an arrest, under the warrant of any other justice, at the suit of the same party, for whose security he has found such sureties. *Lamb. 95, 96. 1 Hawk. 128.*

A superseas may also be had, to a warrant granted by a justice of the peace, finding sureties in the court of Chancery or King's-bench. *F. N. B. 238.*

But by the 21 *Jac. 1, c. 8, par. 3*, after reciting, that divers turbulent and contentious persons, deservedly, fearing to be bound to the peace or good behaviour, by justices of the peace of the counties where they dwell, do oftentimes procure themselves to be bound to the peace or good behaviour in the court of Chancery or King's-bench, upon sufficient sureties, or upon colourable prosecution of some person or persons, who will be ready at all times to release them at their own pleasure; whereupon his majesty's writs of superseas are oftentimes directed to the justices of the peace, and other his majesty's officers, requiring them and every of them to forbear to arrest or imprison the parties aforesaid; by means whereof the said turbulent and contentious persons misdemean themselves amongst

amongst their neighbours with impunity; to the great offence and disturbance of their neighbours amongst whom they converse and live; to the affront of the justices of the peace, and to the evil example and encouragement of like evil-disposed persons; it is enacted, "That all writs of superseatas, to be granted by or out of either of the courts aforesaid, shall be void and of none effect, unless such process be granted upon motion in open court first made, and upon such sufficient sureties as shall appear, unto the judge or judges of the same court respectively, upon oath, to be assessed at five pounds lands, or ten pounds in goods, in the subsidy book at least; and unless it shall also appear, unto the said judge or judges from whom such superseatas is desired, that the process of the peace, or good behaviour, is prosecuted by him or them desiring such superseatas *bona fide*, by some party grieved, in that court out of which such superseatas is desired to be so awarded and directed."

The recognizance for keeping the peace, which a justice of the peace upon a complaint below, is to be regulated, as to the number of sufficiency of the sureties, the largeness of the sum, and the time it is to continue in force, by the discretion of such justice. *Lamb. 100. 1 Hawk. 129.*

It has been said that a recognizance taken by a justice of peace, to keep the peace as to *A. B.* for a year, or for life, or without expressing any certain time, which shall be intended to be for life, although no time or place is fixed for the parties appearance, or he is not bound to keep the peace as to all the king's liege people, is good. *1 Hawk. 129. Lamb. 100.*

But it seems to be the safest way, to bind the party to appear at the next sessions of the peace, and in the mean time to keep the peace as to the king, and all his liege people, and especially as to the party, who has demanded the surety of the peace. *Lamb. 105. 1 Hawk. 129.*

By the 3 *H. 7. c. 1.* it is enacted, "That every justice of the peace within this realm, that shall take any recognizance for keeping of the peace, shall certify, send, or bring the same recognizance at the next sessions of the peace, where he is or hath been justice, that the party so bound may be called."

If one of the sureties of a man who is bound to keep the peace dies, he shall not be obliged to find a new surety; for the executors or administrators of him who is dead, are bound by the recognizance. *Lamb. 113. Bro. Peace, pl. 17. 1 Hawk. 129.*

Of forfeiting a recognizance for keeping the peace, and how such recognizance may be discharged.

By the 3 *H. 7. c. 1.* it is enacted, "That if the party, who is called at a sessions of the peace, upon a recognizance for keeping the peace, makes default, his default shall be then and there recorded, and the same recognizance, with the record of the default, be sent and certified into the Chancery, or afore the king in his Bench, or into the king's Exchequer."

Surety of the Peace.

He who is bound to keep the peace, and to appear at the sessions, must appear there, and record his appearance, otherwise his recognizance is forfeited. And although the party, who craved the surety of the peace, comes not to pray that it may be continued, the justices may in their discretion order it to be continued till another sessions. *Bro. Peace*, pl. 17. *Lamb.* 109.

But if an excuse, which is judged by the court to be a reasonable one, is given for the non-appearance of a party, it seems that the court is not bound peremptorily to record his default, but may discharge the recognizance, or respite it till the next sessions. 1 *Hawk.* 130.

A recognizance for keeping the peace may be forfeited by any actual violence to the person of another, whether it be done by the party bound, or others by his procurement. *Lamb.* 115, 127. *Bro. Peace*, pl. 2. 1 *Hawk.* 130.

In support of a rule to stay proceedings in a *scire facias*, upon a recognizance for keeping the peace, it was said, that the assault, which had been made, was not upon him at whose request the surety of the peace was granted, but upon another person. It was held that this makes no difference; and the rule was discharged. *MS. Rep. Rex. v. Stanly, and his bail*, Trin. 27 Geo. 2.

But a recognizance for keeping the peace, is not forfeited, where an officer, having a warrant against one who will not suffer himself to be arrested, beats or wounds him in the attempt to take him. *Lamb.* 128. 1 *Hawk.* 130.

So it is not forfeited, if a parent in a reasonable manner chastises his child; a master his servant, being actually in his service at the time; a schoolmaster his scholar; a gaoler his prisoner; a husband his wife. 1 *Sid.* 176, 177. *Lamb.* 127, 128. *Hetl.* 149, 150. 1 *Hawk.* 130. *F. N. B.* 80.

And, without enumerating all the actual assaults, which a man may make upon the person of another, and not forfeit his recognizance for keeping the peace, it may be laid down as a principle, that such a recognizance is not forfeited by any assault which could have been justified in an action, or upon an indictment, for the assault. 4 *Bac. Abr.* 694.

It has been held that a recognizance for the keeping the peace may be forfeited by any treason against the person of the king, or by any unlawful assembly *in terrorem populi*. *Lamb.* 115. 1 *Hawk.* 130.

Words which tend directly to a breach of the peace, as challenging a man to fight, or threatening to beat one who is present, amount to a forfeiture of such recognizance. *Lamb.* 115. 1 *Hawk.* 130. *Cro. Eliz.* 86.

A recognizance is likewise forfeited by threatening to beat a person who is absent, if the party, who has so threatened, does afterward lie in wait to beat him. *Lamb.* 115.

But it is not forfeited by words of heat or choler, as the calling a man knave, liar, or rascal: for, although such words may provoke a hasty man to break the peace, they do not directly challenge him to do it; nor does it appear, that the speaker intended to carry his resentment any farther. *Cro. Car.* 198. *Rex. v. Herward, and his bail*, 1 *Hawk.* 130.

Nay, it has been held, that a recognizance for being of good behaviour shall not be forfeited for such words; and *a fortiori* one for keeping the peace shall not. *Cro. Eliz.* 86. *King's case.* *Mo.* 249. *1 Hawk.* 130.

Such recognizance shall not be forfeited by a trespass on the lands or goods of another, unless it is with force. *Cro. Jac.* 528. *1 Hawk.* 193.

A man shall not forfeit a recognizance for keeping the peace, who does a hurt to another in playing at cudgels, or such like sport, by consent; for these sports, which tend to promote activity and courage, are lawful. *Dalt.* 284. *1 Hawk.* 131.

But he who wounds another in fighting with naked swords, forfeits his recognizance, because no consent, nor even the command of the king can make so dangerous a diversion lawful. *Bro. Cor.* 229. *1 Hawk.* 131.

If a soldier hurts another soldier, by discharging his gun in exercising without sufficient caution, it is no forfeiture of a recognizance for keeping the peace; for although he would be liable in an action for the damage occasioned by his negligence, this, it not being a wilful breach of the peace, is not within the purport of the recognizance. *1 Hawk.* 131. *Heb.* 134. *2 Rol. Abr.* 548.

A court of quarter-sessions cannot in any case proceed against the parties, for a forfeiture of a recognizance for keeping the peace, but the recognizance must be sent into some of the king's courts in *Westminster Hall*. *1 Hawk.* 130.

All proceedings upon a forfeited recognizance must be by *scire facias*, and not by indictment; because where a *scire facias* is brought, the parties have an opportunity of pleading any matter in their discharge. *1 Roll. Abr.* 900. *Perrow's case.* *Cro. Jac.* 598. *1 Hawk.* 130.

If the party who is bound to keep the peace dies, the sureties may, upon shewing this, be discharged from the recognizance. *Sav.* 53. *Halfhide's case.*

So if the party who has required the surety of the peace dies, the recognizance may be discharged. *1 Lev.* 235. *1 Hawk.* 129.

But the release of the party, at whose complaint it was taken, is no discharge of a recognizance; for as the recognizance is to the king and not to him, it is not in his power to discharge it. *Bro. Peace,* *pl.* 17. *Lamb.* 111.

A husband was bound to keep the peace for a year, upon articles exhibited in the court of King's-bench by his wife. A motion being made to discharge the recognizance, upon a suggestion that the wife was thereto consenting, it was denied by the court: And *per Holt*, Ch. J. How can we discharge this recognizance, before the condition of it is performed? *11 Mod.* 109. *The Queen, v. Lord George Howard.*

A release however from the party, at whose complaint it was taken, may, if no time for its continuance is mentioned in the recognizance, be an inducement to a court to discharge it. *1 Hawk.* 129. *11 Mod.* 109.

The demise of the king is a discharge of a recognizance for keeping the peace; for the condition being *servare pacem nostram*, his successor cannot take advantage of a breach thereof. *Bro. Peace,* *pl.* 15. *1 Hawk.* 129.

Surety of the good Behaviour.

After such a recognizance is forfeited, the king may pardon the forfeiture; but he cannot release the condition before it is broken; because the party, at whose complaint it was taken, has an interest therein. *Bro. Recogn. pl. 22. Bro. Chart. de Pard. pl. 24.*

It has been held, that, if a recognizance for keeping the peace is removed by a *certiorari*, the obligation to appear upon such recognizance is thereby discharged. *2 Rol. Abr. 492. F. pl. 1. Dalt. 278.*

But this would be highly inconvenient; and the better opinion seems to be, that a *certiorari* is no discharge of the appearance upon such recognizance. *Cro. Jac. 282. Rosse v. Pye. Yelv. 207. 2 Hawk. 294.*

If no time for the continuance of a recognizance for keeping the peace, is therein mentioned, it is perhaps in the power of the court, in which it was taken, or to whom it has been certified, to discharge it at their discretion. *4 Bac. Abr. 695.*

The usual practice of a court of quarter-sessions is to continue a recognizance for keeping the peace from sessions to sessions, until the court thinks proper to discharge it.

It is the constant course of the court of King's-bench, to take a recognizance for twelve months, and, if no indictment is within that time preferred against the party bound to keep the peace, it may at the expiration thereof be discharged. *12 Mod. 251. Anon. Str. 835.*

This seems also to be the practice of the court of Chancery; for, upon a motion to discharge a writ of *supplicavit*, it was refused; and by my Lord *Macclesfield*, chancellor, this application is too early; let the party stay till the year is out, and behave himself quietly all that time. *2 Will. 202. Clavering's case.*

Surety

Of the good Behaviour.

GOOD behaviour (*bonus gestus*) is, by a special signification, an exact carriage or behaviour of a subject to the king and his liege people, whereunto men upon their evil course of life, or loose demeanor, are sometimes bound: for as *Lambard*, in his *Eirenarcha*, lib. 2, c. 2, saith, he that is bound to this is more strictly bound than to the peace; for the peace is not broken without an affray, but this surety *de bono gestu* may be forfeited by the number of a man's company, or by his or their weapons or harness. See *Crompton's Just. of Peace*, fol. 119—127. *Cowell.*

In what cases, in what manner, and how long, a person may be compelled to find surety for his good behaviour.

Per Holt. Ch. J. By law none can be compelled to find surety for his good behaviour, except it be by ancient custom within a leet, or for vagrancy, or some certain offence; and here one being committed thus; Whereas *A.* has been convicted of a misdemeanor, and cannot find security for his good behaviour, therefore, &c. And here could be no *certiorari*, there being no record of the conviction, the party being brought up upon a *habeas corpus*, was discharged on motion. *Per cur. Trin.* 12 *W.* 3, *B. R.* 12 *Mod.* 413. *Ann.*

If one lives extravagant and high, who has no visible way of getting it, it may be reasonable to enquire how he lives, and may be liable to find sureties of the good behaviour; but if a man lives in a reasonable quiet manner, it is hard to hold him to it; *per Holt*, Ch. J. *Mich.* 13 *W.* 3. *B. R.* 12 *Mod.* 566. in *Eliz. Claxton's* case.

A justice of peace cannot bind one to the good behaviour upon a general information, or commit him to prison for refusing to find sureties for his good behaviour upon such information. *Sti. Pasch.* 25 *Car.* 2. *Sir William Bronker's* case.

If a witness is insolent we may commit him for the immediate contempt, or bind him to his good behaviour, but we cannot indict him for it, and that is according to the common law of *England*; *per Holt*, Ch. J. *Trin.* 1 *Ann.* *B. R.* *Farr.* 29, in case of the *Queen v. Rogers*.

Surety for the good behaviour may be required of scandalous, turbulent, suspicious persons, as of forcible entries, or obscene writers or recusants; but not in respect of bare words, unless they tend to a breach of the peace, or scandal of the government. *Hawk. Pl. C. cap.* 61, 9. See *Pl.* 1, 2, 3, 4.

A. was committed to *Newgate* by the mayor of *London* for calling *B.* an alderman of *London*, fool and knave upon the *Royal Exchange*, in the presence of divers; upon a *habeas corpus*, it was certified, that the custom of *London* was, upon such a misdemeanor, to commit any citizen to prison, &c. but by assent of the whole court, he was discharged. And *Walmsly*, J. said, that if justices of peace require sureties of the peace, not having good cause so to do, and the party refuses, and is committed to prison, false imprisonment lies. For the statute of 34 & 35 *Ed.* 3, which gave them that authority, is principally for vagrant persons, &c. and is not intended for every private abuse. And *Anderson* said, he could not see how the custom could be maintained, and that a man may be imprisoned for a contempt done in, but not for one done out of court. *Cro. E.* 689. *Trin.* 41 *Eliz.* *C. B.* *Dean's* case.

One was indicted for that he *scandalose & contemptuose propalavit & publicavit verba sequentia, viz.* That none of the justices of peace understand the statutes for the excise, unless *Mr. A. B.* and he understands but little of them; no, nor many parliament men do not understand them upon the

reading

Surety of the good Behaviour.

reading of them. And it was moved to quash the indictment, for that a man could not be indicted for speaking such words; and of that opinion was the court; but they said he might be bound to his good behaviour. *Pasch. 21 Car. 2, B. R. Vent. 16. The king v. Burford.*

In an action on the case for maliciously prosecuting an indictment of perjury, of which he was acquitted Upon not guilty pleaded, it appeared on the evidence, that the defendant was a justice of peace, and procured some as witnesses to appear against the plaintiff, and his own name was indorsed on the indictment to give evidence. The court agreed, this did not make him a prosecutor; for if a justice of peace knows any person that can give evidence against one indicted, he ought to cause him to do it. But it was proved on the defendant's side, that this indictment was drawn up by an order of sessions. *Keyling, Ch J* said, the plaintiff deserved to be bound to his good behaviour, for bringing this action. *Mich. 21 Car. 2. B. R. Vint 47. Gurlington v. Pitfield.*

A. offers money to a woman with child to buy poison to kill the child; this is good cause to bind *A.* to his good behaviour. *Trin. 28 Eliz. B. R. Cro. E. 49, in the case of Sir Cocham and Ux. v. Witnam.*

If one do affront any court of justice, this is a good cause to bind the party to his good behaviour. *Pasch. 24 Car. B. R.* For the affronting of justice is a publick misdemeanor, and not a private one, although it be done but to the person of one man, as to the judge of a court, a justice of peace, &c. because such persons are publick ministers of justice, and act for the commonwealth. *L. P. R. 649, 650.*

Stat. 34 Ed. 3, 1, impowers justices of peace to chastise rioters, barretors, and other offenders, and also to imprison and punish them according to law, and by discretion and good advisement; and also to bind persons of evil fame to the good behaviour, and to hear and determine felonies and trespasses done in the same county according to law.

This statute being penned in such general words seems in a great measure to have left it to the discretion of justices of peace, to determine what persons are fit to be bound to their good behaviour, and consequently seems to impower them, not only to bind over those, who seem to be notoriously troublesome, and likely to break the peace, as eves-droppers, &c. but also those who are publicly scandalous, or contemnors of justice, &c. as haunters of bawdy-houses, or keepers of lewd women in their own houses, common drunkards, or those that sleep in the day, and go abroad in the night, or such as keep suspicious company, or such as are generally suspected as robbers, or such as speak contemptuous words of inferior magistrates, as justices of peace, mayors, &c. not being in the actual execution of their offices; or of inferior officers of justice, as constables, &c. being in the actual execution of their office; but it seems that rash, quarrelsome or unmannerly words, spoken by one private person to another, unless they directly tend to a breach of the peace, are not sufficient cause to bind a man to his good behaviour. *1 Hawk. Pl. C. Abr. 153, cap. 61, s. 2, the book at large, sect. 2, 3, 4.*

Surety of the good Behaviour.

953

Sureties of good behaviour may be required of persons convicted of disturbing divine service, 1 *M. ft.* 2, c. 3, *sect.* 6.

Or offending against game laws, 5 *El. c.* 21, *sect.* 2, 3. 22 & 23 *Car.* 2, c. 25, *sect.* 4.

Or entertaining outlawed felons, 43 *Eliz. c.* 13, *sect.* 5.

Or persons infected with the plague going abroad, though no fore on them, 1 *Jac.* 1, c. 31, *sect.* 7.

Or unlawfully hunting in parks, 3 *Jac.* 1, c. 13, *sect.* 2.

Or convicted a second time of drunkenness, 4 *Jac.* 1, c. 5, *sect.* 3. 21 *Jac.* 1, c. 7, *sect.* 3.

Or refusing to take the oaths of supremacy and allegiance, 1 *W. & M. ft.* 1, c. 8, *sect.* 9.

Or of felons after pardon, 5 *W. & M. c.* 13, *sect.* 2.

Of persons unlawfully gaming, 9 *Ann. c.* 14, *sect.* 6.

Or committing disorders in dock-yards, 1 *Geo.* 1, c. 25, *sect.* 2.

Or destroying timber, 1 *Geo.* 1, c. 48, *sect.* 3.

Or forcing through turnpikes, 8 *Geo.* 2, c. 20, *sect.* 11.

Or pretending to witchcraft, 9 *Geo.* 2, c. 5, *sect.* 4.

Or assisting in running goods, 9 *Geo.* 2, c. 35, *sect.* 19.

Where one is arrested to the peace, the justice is not bound to demand surety, but the party ought to offer surety, otherwise the justice may award him to gaol. *Br. Peace. pl.* 7, cites 24 *H.* 7, 8.

Note; Where *supplicavit* of peace is directed to the justices of peace, the justice, to whom the writ is first delivered, shall alone make precept to take the party to find surety, and it shall be returnable before him only, and he only shall take sureties, and shall make the return alone without the others. *Br. Peace, pl.* 9, cites 21 *H.* 7, 20. *per Fineux*, Chief-justice.

The court was moved to grant the good behaviour against the lord *Foliot*, because he was indicted for a foul battery at the sessions in *London*, and the bill was found against him; but *per Roll*, Ch. J. it cannot be granted on a motion, but you must prefer articles against him here on oath, and then you may move for it; and if there appears cause in the articles, it shall be granted. *Sti.* 299. *Mich.* 1651. *B. R. Davis v. Lord Foliot.*

He that doth, upon articles sworn in court, desire that the party, against whom the articles are sworn, may be bound thereupon to the good behaviour, must *express some special matter* in those articles, for which he ought to be bound to the good behaviour; for if the articles be only general, the good behaviour is not to be granted upon them; for a general accusation is no accusation on account of the uncertainty of it, and the party cannot tell what answer to make to such a general accusation. *L. P. R.* 650.

Bond of 1000*l.* may be required for keeping the peace, as the case may stand, *viz.* if the party bound be a dangerous person; *per Roll*, Ch. J. *Pasch.* 1652. *B. R. Sti.* 322. *Anon.*"

The:

Surety of the good Behaviour.

The return of the recognizance ought to be certified by the persons who took it, and if by any other, as the sheriff, &c. it is not good. *Trin. 21 Jac. 1. B. R. Cro. J. 669. Leonard Ford v. King.*

By the course of the court, a person bound to keep the peace, ought to continue upon his recognizance for a year; *per Holt, Ch. J. 12 Mod. 251. Mich. 10 W. 3. B. R.*

When such surety is discharged, or superseded, of breach thereof, and of pleadings, and proceedings therein.

In error, when the peace is granted in *B. R.* and after *supersedeas* of the Chancery comes to them, *ipso facto* their power in bank is expired, and the party, against whom it was awarded, is discharged against them of the bank; *per* all the justices. *Br. Peace, pl. 17, cites 21 Ed. 4, 40.*

And when a man has found surety to keep the peace against *J. S.* and all the king's people, the party cannot release it after, because others have interest in it; but *Brook* says, it is used otherwise now. *Ibid.*

And if he pays the money, he shall be awarded to prison, till he find surety again; for the first recognizance is now determined, and he appears to be a trespasser of the law; and if the sureties die, there, upon a surmise of the king's attorney, the court shall award process, to compel the parties to find new sureties; *per* all the justices, and by others *e contra*, for the executors are obliged. *Ibid.*

And by some, if a man finds surety of the peace, and no day is limited, there none can release it, but he is bound during his life, and therefore it is good to find surety till such a day. *Ibid.*

A new king cannot take the forfeiture of mainprize taken in the time of the king his predecessor. *Tempore E. 3. tit. Re attachment in Fitz. 18.* And such mainprize was *anno 1 H. 7, 20.* And the opinion of the court was, that by the death of the king it is discharged, and that every surety of the peace, and mainpernor, for keeping of day in the time of another king, are discharged by the demise of the king in every court; *quod fuit concessum* of surety to the peace, for it is *servare pacem nostram, viz.* of that king; and his peace is determined by his death. *Br. Peace, pl. 15, cites 1 H. 7, 2, and 1 Ed. 5, 1, and Fitz. Reatt. 18, accordingly.*

Where on reading affidavits, and examining the matter, it appeared to the court, that the binding to the good behaviour was upon malice and for vexation, *B. R.* discharged them. *Hill. 1652. B. R. Sti. 364. Sir Thomas Revell's case.*

Note; the king cannot discharge recognizance taken for surety of the peace, but after it is broken he may. *Hill. 1 & 2 W. & M. C. B. 2 Vent. 131, cites 11 H. 7, 12, and in Marg. 1 Inst. 238. Vaughb. 334.*

A husband was bound to the peace for a year, upon articles exhibited against him by his wife; and on motion to discharge the recognizance, upon suggestion that the wife was consenting, it was denied *per Holt*, who said, how can we discharge it before the condition is performed? *Pasch. 6 Ann. B. R. 11 Mod. 109. The queen against lord George Howard.*

It

It hath been holden, that a *certiorari* to remove a recognizance for the good behaviour, will supersede its obligation; but this would be highly inconvenient, and the contrary opinion seems to be supported with the better authority. 2 *Hawk. Pl. C.* 294, *cap.* 27, *sect.* 65, cites as follows; 2 *R. A.* 922. (F) *pl.* 12. *Dalt. cap.* 75. *Cro. Jac.* 282.

To be drunk is breach of good behaviour, but cholerick words, being provoked by another, is not; *per Houghton J.* and *Chamberlain* accordingly; but *per Mountague J.* Words that are actual and violent and not vocal, are a breach. *Mich.* 18 *Jac. B. R.* 2 *Roll. R.* 200. *Stamper v. Hide.*

If one that is bound to the peace break his recognizance, he may be indicted upon it, for 'tis a new offence. *Per Roll. Ch. J.* 1653. *C. B. Sti.* 369. *Anon.*

Such a recognizance shall not only be forfeited for such actual breaches of the peace, for which a recognizance for the peace may be forfeited; but also for some others, for which such a recognizance cannot be forfeited, as for going armed with great numbers to the terror of the people, or speaking words tending to sedition. And also for all such actual misbehaviours, which are intended to be prevented by such a recognizance, but not for barely giving cause of suspicion of what perhaps may never actually happen. *Hawk. Pl. C. cap.* 62, *pl.* 6.

If a man be bound to good behaviour with sureties, and for his appearance in *B. R.* at a day certain, and he dies before the day, and for non-appearance the recognizance be estreated, and process made against the sureties, the sureties must shew by plea all this matter before they can be discharged; and if the attorney-general will confess it, 'tis enough; otherwise, if he will take issue on the death it must be tried. *Pasch.* 25 *Eliz. B. R. Savil* 53, *pl.* 114. *Halfhide's case.*

Sci. fa. on a recognizance for the good behaviour taken in the Crown-office. The breach assigned was, that he assaulted and beat such a one such a day, and says not *vi & armis*. And for this cause, after verdict, the exception was taken, and judgment stayed. *Cro. J.* 412. *Mich.* 14 *Jac. B. R. The King v. Hutchins.*

The recognizance of peace being taken by a justice of peace, it may be certified by *certiorari*, though the justice of peace does not bring it to the sessions, nor to the *custos rotulorum*; and if *superfedeas* be returned to the sessions, and no recognizance, then *certiorari* may be awarded to the same justice to certify the recognizance; but see the statute of 3 *H.* 7, *cap.* 3, that the justice forfeits 10*l.* if he does not certify the recognizance at the next sessions. *Br. Peace. pl.* 11, cites 2 *H.* 7, 11.

'Tis a common course, in cases of persons bound to their good behaviour, to indict them, which will be evidence in a *sci. fa.* on the recognizance. *Hill.* 30 *Eliz. B. R. Cro. E.* 86. *King's case.*

Capias against *A.* to find sureties *de se bene gerendo*. Sheriff may break the house to arrest the party, as upon a *cap. utlag.* *Trin.* 42 *Eliz. E. R. Mo.* 606. *pl.* 857.

Swearing.

ST A T. 19. *Geo.* 2, c. 21. [*A D.* 1746, *intituled,*] “ An act more effectually to prevent profane cursing and swearing.”

“ Forasmuch as the horrid, impious, and execrable vices of profane cursing and swearing (so highly displeasing to Almighty God, and loathsome and offensive to every Christian) are become so frequent and notorious, that unless speedily and effectually punished, they may justly provoke the divine vengeance to increase the many calamities these nations now labour under: And whereas the laws now in being for punishing those crimes, have not answered the intents for which they were designed, by means of difficulties attending the putting such laws in execution: for remedy whereof, may it please your most excellent majesty, that it may be enacted; and be it enacted by the king’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That from and after the first day of *June*, one thousand seven hundred and forty six, if any person or persons shall profanely curse or swear, and be thereof convicted on the oath of any one or more witness or witnesses, before any one justice of the peace for any county, city, riding, division, or liberty, or before the mayor, justice, bailiff, or other chief magistrate, of any city or town corporate, or by the confession of the party offending, every person or persons so offending, shall forfeit and lose the respective sums herein after mentioned; (that is to say)

The penalty
of profane
cursing and
swearing.

Every day labourer, common soldier, common sailor, and common seaman, one shilling;

And every other person under the degree of a gentleman, two shillings;

And every person of or above the degree of a gentleman, five shillings.

And in case any such person or persons shall, after conviction, offend a second time, every such person shall forfeit and lose double; and for every other offence after a second conviction, treble the sum first forfeited by any offender, for profane cursing and swearing as aforesaid.

Profane
swearers in
the hearing of
any justice,
&c.

Sec. 2. “ And be it further enacted by the authority aforesaid, That in case any person or persons shall profanely swear or curse, in the presence and hearing of any justice of the peace for any county, riding, division, or liberty; or in the presence or hearing of any mayor, justice, bailiff, or other chief magistrate of any town corporate; every such justice, mayor, or other chief magistrate as aforesaid, shall, and is hereby authorized and required to convict every such offender of such offence

(ni

(in the form and manner herein after set forth) without any other proof^{without} whatsoever.^{other proof.}

Sect. 3. "And be it further enacted by the authority aforesaid, That ^{Constables, &c. to seize persons profanely swearing, if unknown,} in case any person or persons shall profanely swear or curse, in the presence and hearing of any constable, petty constable, tythingman, or other peace officer, it shall and may be lawful for any and every such constable, petty constable, tythingman, or other peace officer, and they and each of them are hereby authorized and required (in case any such person shall be unknown to such constable, petty constable, tythingman, or other peace officer) to seize, secure, and detain such offender or offenders, unknown to him or them as aforesaid; and such offender or offenders forthwith to carry before the next justice of the peace for the county, riding, division, or liberty, or before the mayor, justice, bailiff, or other chief magistrate of the town corporate, wherein such offence was committed; and the said justice, mayor, or other chief magistrate, is hereby authorized and required, on the oath of such constable, petty constable, tythingman, or other peace officer, to convict the offender in manner and form herein after directed: And in case any such person so profanely swearing or cursing, in the presence or hearing of any such constable, petty constable, tythingman, or other peace officer, shall be known to any of them, every such constable, petty constable, tythingman, or other peace officer, shall and is hereby required speedily to make information before some justice of the peace for the county, riding, division, or liberty, mayor, justice, bailiff, or chief magistrate of any town corporate, as aforesaid, in order that the offender or offenders may be by such justice, mayor, bailiff, or chief magistrate convicted thereof, and punished for the same, in manner and form as in and by this act is directed. ^{and bring them before the next justice, &c. who is to convict them on the officer's oath; and if they are known, information to be made.}

Sect. 4. "And be it further enacted by the authority aforesaid, That every ^{Justices, &c. upon information, to order the offender to appear, &c.} such justice of the peace, mayor, or other chief magistrate as aforesaid, shall immediately upon information given upon oath of any such constable, petty constable, tythingman, or other peace officer, or of any other person whatsoever, cause the offender or offenders to appear before him; and upon such information being proved as aforesaid, convict such offender or offenders in such manner as in and by this act is prescribed. And in case such offender or offenders shall not immediately pay down the respective sum so forfeited, or give security to the satisfaction of such justice, mayor, or other chief magistrate, before whom such conviction is made, it shall and may be lawful for such justice, mayor, or other chief magistrate, to commit the offender to the house of correction for the county, riding, division, liberty, city, or town corporate, where such offence shall be committed, there to remain, and be kept to hard labour, for the space of ten days. ^{Penalty to be paid, or security given, or the offender to be committed for 10 days to the house of correction.}

Sect. 5. "Provided always, and it is hereby enacted by the authority aforesaid, That in case any common soldier belonging to any regiment in his majesty's service, or any common sailor or common seaman belonging to any ship or vessel shall be convicted of profane cursing or swearing as aforesaid, and shall not immediately pay down the penalty by him forfeited, &c. ^{Common soldiers and sailors, not paying the penalty, &c.}

to be set in
the stocks.

or give security for the same as aforesaid, and also the cost of the information, summons, and conviction, as in and by this act is directed, every such common soldier, common sailor or common seaman, instead of being committed to the house of correction, as by this act is directed, shall, by the said justice, mayor, bailiff, or other head officer, be ordered to be publickly set in the stocks for the space of one hour, for every single offence; and for any number of offences, whereof he shall be convicted at one and the same time, two hours.

Justices, &c.
not doing
their duty,

forfeit 5l.

Sett. 6. " And be it further enacted by the authority aforesaid, That if any justice of the peace of any county, riding, division, or liberty, mayor, justice, bailiff, or other chief magistrate of any town corporate, shall wilfully and wittingly omit the performance of his duty, in the execution of this act, he shall forfeit and lose the sum of five pounds; one moiety thereof to the use of the informer, and the other moiety thereof to the use of the poor of the parish wherein such justice, mayor, or other chief magistrate shall reside; to be recovered by action, suit, bill, or plaint, in any of his majesty's courts of record at *Westminster*; wherein no essoin, protection, or wager of law, shall be allowed, or more than one imparlance.

Constables,
&c. not doing
their duty,

forfeit 40s.

Sett. 7. " And be it further enacted by the authority aforesaid, that if any constable, petty constable, tythingman, or other peace officer, shall wilfully and wittingly omit the performance of his duty in the execution of this act, and be therefore convicted by the oath of one witness, before any justice of the peace for any county, riding, division, or liberty, or before the mayor, justice, bailiff, or other chief magistrate of any town corporate, every such constable, petty constable, tythingman, or other peace officer so offending, shall forfeit and lose the sum of forty shillings; to be levied and recovered by distress and sale of the offender's goods and chattels, by virtue of a warrant under the hand and seal of such justice, mayor, or other chief magistrate, and to be disposed of, one moiety thereof to the use of the informer, and the other moiety to the use of the poor of the parish where such offence shall be committed; and in case such offender shall not have sufficient goods and chattels, whereon to levy the said penalty, it shall and may be lawful for such justice, mayor, or other magistrate, to commit such offender to the house of correction for the county, riding, division, liberty, city, or place, there to remain, and be kept to hard labour, for the space of one month.

and for want
of distress, to
be committed
for 1 month
to the house
of correction.

Sett. 8. " And be it further enacted by the authority aforesaid, That all and every justice of the peace for any county, riding, division, or liberty, and all and every mayor, justice, bailiff, or other chief magistrate of any town corporate, before whom any person or persons shall be convicted of profane swearing or cursing, shall cause the conviction to be drawn up in the words and form following.

Form of con-
viction;

Middlesex,
To wit.

BE it remembered, that on the _____ day of _____
in the _____ year of his majesty's reign, A. B. was
convicted before me (*one of his majesty's justices of the peace for
the county riding, division, or liberty aforesaid; or before me (mayor,
justice,*

*justice, bailiff, or other chief magistrate of the city or town of
within the county of
as the case shall be) of swearing one or more profane oath or oaths,
or of cursing one or more profane curse or curses, as the case shall
be.*

Given under my hand and seal the day and year aforesaid.

Which said form and conviction shall not be liable to be removed by *certiorari* into his majesty's court of King's-bench but shall be deemed and taken to be final to all intents and purposes whatsoever; and the said justice, mayor, bailiff, or other chief magistrate, before whom such conviction shall be made, shall cause the same to be fairly wrote over upon parchment, and returned to the next general or quarter sessions of the peace for the county wherein such conviction was made, to be filed by the clerk of the peace, and remain and be kept amongst the records of the said county.

to be wrote
on parch-
ment, and re-
turned to the
next sessions.

Sec. 9. " And be it further enacted by the authority aforesaid, That all and every justice of the peace for any county, riding, division, or liberty, and every mayor, justice, bailiff, or other chief magistrate of any city or town corporate, may, and they are hereby authorized and required to put this act in execution against any person or persons within their several jurisdictions, although such justice, mayor, bailiff, or other chief magistrate shall be rated and pay to the relief of the poor of any parish, town, or place, where any offence, contrary to the true intent and meaning of this act, shall be committed; any law or statute to the contrary in any wise notwithstanding.

Justices, &c.
to put this act
in execution
indiscrimi-
nately.

Sec. 10. " And be it further enacted by the authority aforesaid, That all and every penalty or penalties inflicted by this act, upon any person or persons for profane cursing and swearing, shall be disposed of for the benefit of the poor of the parish wherein such offence was committed; and that all charges of the information and conviction of any such offender shall be borne and paid by the party offending, if able, over and above the penalties inflicted by this act, which charges shall be settled and ascertained by the justice of peace, mayor, bailiff, or other chief magistrate, before whom such conviction shall be made. And in case such party shall not be able, or shall not immediately pay the said charges and expences, or give security for the same to the satisfaction of such justice of the peace, mayor, bailiff, or other chief magistrate, it shall and may be lawful for the justice, mayor, bailiff, or other chief magistrate, before whom such information and conviction shall be made, to commit such offender to the house of correction as aforesaid, there to remain, and be kept to hard labour, for the space of six days, over and above such time for which such offender may be committed in default of payment of the penalties inflicted by this act; and in such case no charges of information and conviction shall be paid by any person whatsoever.

Penalties how
to be disposed
of.

Offenders to
pay all charges
over and
above the pe-
nalties,

or be commit-
ted to the
house of cor-
rection for 6
days extraor-
dinary.

Sec. 11. " And it is hereby further enacted, That if any action or suit shall be commenced or brought against any justice of the peace, constable, or other officer or person whatsoever, for doing, or causing to be done,

done,

General issue. done, any thing in pursuance of this act, concerning the said offences, the defendant in that action may plead the general issue, and give the special matter in evidence; and if upon such action, verdict be given for the defendant, or the plaintiff become nonsuit, or discontinue his action, then the defendant shall have treble costs.

Treble costs.

Proof, &c. to be made within 8 days.

Seet. 12. " Provided always, and it is hereby enacted, That no person shall be prosecuted or troubled for any offence against this statute, herein before or herein after mentioned, unless the same be proved or prosecuted within eight days next after the offence committed.

Act to be read quarterly in all churches, &c.

Seet. 13. " And it is further enacted by the authority aforesaid, That this act shall be publickly read four several times in the year, in all parish churches and publick chapels, by the parson, vicar, or curate of the respective parishes or chapels, immediately after morning or evening prayer, on four several *Sundays* (that is to say) the *Sunday* next after the twenty-fifth day of *March*, twenty-fourth day of *June*, twenty-ninth day of *September*, and twenty-fifth day of *December*, in every year; or in case divine service shall not be performed in any such church or chapel on any of the *Sundays* before mentioned, then upon the first *Sunday* after any of the said quarterly days on which divine service shall happen to be performed in any such church or chapel, under the pain of forfeiting the sum of five pounds for every such omission or neglect; to be levied by distress and sale of the offender's goods and chattles, by virtue of a warrant under the hand and seal of any one justice, mayor, bailiff, or other chief magistrate, as aforesaid.

Penalty of 5*l.* for neglect.

Fee of 1*s.* to the justice's &c. clerk.

Seet. 14. " And be it further enacted by the authority aforesaid, That the clerk of the justice, mayor, bailiff, or other chief officer, before whom proceedings upon this act shall be had, shall and may receive and take for the information, summons, and conviction of every offender against this act, the sum of one shilling, and no more.

21 *Jac.* 1, c. 20; and 6 & 7 *W.* 3, c. 11, repealed.

Seet. 15. " And be it further enacted by the authority aforesaid, That from and after the said first day of *June*, one thousand seven hundred and forty six, an act made in the twenty-first year of the reign of king James the First, intituled, *An act to prevent and reform profane cursing and swearing*; and also an act made in the sixth and seventh years of the reign of king William the Third, intituled, *An act for the more effectual suppressing profane cursing and swearing*, shall be and are hereby repealed.

James.

Thames.

THE statutes which concern the navigation of the river *Thames* not being of general importance, it is sufficient only to mention them: viz. 2 & 3 *P. & M.* c. 16; 1 *Jac.* 1, c. 10; 6 & 7 *W.* 3, c. 16; 11 & 12 *Will.* 3, c. 21; 4 *Ann.* c. 13; 9 *Ann.* c. 26; 2 *Geo.* 2, c. 26; 4 *Geo.* 2, c. 24; 5 *Geo.* 2, c. 20; 6 *Geo.* 2, c. 29; 10 *Geo.* 2, c. 31; 24 *Geo.* 2, c. 8.

Tithes.

STAT. 27 *Hen.* 8, c. 20, [*A. D.* 1535, intituled] “For Tithes to be paid throughout this realm.”

“Forasmuch as divers numbers of evil-disposed persons inhabited in sundry counties, cities, towns, and places of this realm, having no respect to their duties to Almighty God, but against right and good conscience having attempted to subtract and withhold in some places the whole, and in some places great parts of their tithes and oblations, as well personal as predial, due unto God and holy church; (2) and, pursuing such their detestable enormities and injuries, have attempted in late time past to disobey, contemn, and despise the process, laws, and decrees of the Ecclesiastical Court of this realm, in more temerous and large manner than before this time hath been seen: (3) For reformation of which said injuries, and for unity and peace to be preserved amongst the king’s subjects of this realm, our sovereign lord the king being supreme head on earth (under God) of the church of *England*, willing the spiritual rights and duties of that church to be preserved, continued, and maintained, hath ordained and enacted by authority of this present parliament, that every of his subjects of this realm of *England*, *Ireland*, *Wales*, and *Caleis*, and marches of the same, according to the ecclesiastical laws and ordinances of his church of *England*, and after the laudable uses and customs of their parish, or other place where he dwelleth or occupieth, shall yield and pay his tithes and offerings, and other duties of holy church; (4) and that for such subtractions of any of the said tithes and offerings, and other duties, the parson, vicar, curate, or other party in that behalf grieved, may, by due process

This statute is confirmed and enlarged by 2 & 3 Ed. 6, c. 13.

Tithes shall be paid according to the custom of the parish where they be due. The offender in subtracting of tithes shall

be convened before the ordinary.

The offender shall be bound by two justices of peace, &c. to obey the ordinary's sentence.

This act shall not extend to the citizens of London.

Every person shall have his demand and defence according to the laws ecclesiastical.

25 H. 8, c. 19, f. 7.
13 Car. 2, stat. 1, c. 12, f. 5.

process of the king's ecclesiastical laws of the church of *England*, convent the person or persons offending before his ordinary, or other competent judge of this realm, having authority to hear and determine the right of tithes, as also to compel the same person or persons offending to do and yield their said duties in that behalf. (5) And in case the ordinary of the diocese, or his commissary, or the archdeacon, or his official, or any other competent judge aforesaid, for any contempt, contumacy, disobedience, or other misdemeanor of the party defendant, make information and request to any of the king's most honourable council, or to the justices of the peace of the shire where such offender dwelleth, to assist and aid the same ordinary, commissary, archdeacon, official, or judge, to order or reform any such person in any cause before rehearsed; that then he of the king's said honourable council, or such two justices of peace, whereof the one to be of the *Quorum*, to whom such information or request shall be made, shall have full power and authority, by virtue of this act, to attach or cause to be attached, the person or persons against whom such information or request shall be made; (6) and to commit the same person or persons to ward, there to remain without bail and mainprize, till that he or they shall have found sufficient surety, to be bound by recognizance or otherwise before the king's said councillor, or justice of peace, or any other like councillor or justice of peace, to the use of our said sovereign lord the king, to give due obedience to the process, proceedings, decrees, and sentences of the Ecclesiastical Court of this realm, wherein such suit or matter for the premises shall depend or be. (7) And that every of the king's said councillors, or two justices of the peace, whereof the one to be of the *Quorum*, as is aforesaid, shall have full power and authority, by virtue of this act, to take, receive, and record recognizances and obligations in any of the causes above written.

Secl. 2. "Provided alway, That this act, or any thing therein contained, shall not extend to any inhabitant of the city of *London*, for or concerning any manner of tithe, offering, or other ecclesiastical duty, grown and due, to be paid or yielded within the same city, because there is another order made for the payment of tithes and other duties within the said city.

Secl. 3. "Provided also, That every person and persons, being party or parties to any such suit, shall and may make and have his and their lawful action, demand, or prosecution, appeals, prohibitions, and all other their lawful defences and remedies in every such suit, according to the said ecclesiastical laws, and laws and statutes of this realm, in as ample and liberal manner and form as they or any of them might have had, if this act had never been made; any thing in this act above written notwithstanding.

Secl. 4. "Provided always, and be it enacted by authority aforesaid, That this act for recovering of tithes, nor any thing therein contained, shall take force and effect but only until such time as the king's highness, and such other xxxii persons which his highness shall name and appoint for the making and establishing of such laws as his highness shall affirm and

and ratify, to be called the ecclesiastical laws of the church of *England*:
(2) and after the said laws so ratified and confirmed as is aforesaid, that ^{32 H. 8, c. 7.}
then the said tithes to be paid to every ecclesiastical person according to
such laws, and none otherwise."

STAT. 32 *Hen. 8, c. 7*, [*A. D. 1540, intituled*] "For the true payment
of Tithes and Offerings."

"Where divers and many persons inhabiting in sundry countries and
places of this realm, and other the king's dominions, not regarding their
duties to Almighty God, and to the king our sovereign lord, but in few
years past more contemptuously, and commonly presuming to offend and
infringe the good and wholesome laws of this realm, and gracious com-
mandments of our said sovereign lord, than in times past hath been seen
or known, have not letted to subtract and withdraw the lawful and ac-
customed tithes of corn, hay, pasturages, and other sort of tithes, and
oblations commonly due to the owners, proprietaries, and possessors of the
parsonages, vicarages, and other ecclesiastical places of and within the
said realm and dominions, (2) being the more encouraged thereto, for
that divers of the king's subjects, being lay persons, having parsonages,
vicarages, and tithes to them, and to their heirs, or to them, and to their
heirs of their bodies lawfully begotten, or for term of life, or years,
cannot by the order and course of the ecclesiastical laws of this realm,
sue in any ecclesiastical court for the wrongfully withholding and de-
taining of the said tithes, and other duties, (3) nor cannot by the or-
der of the common laws of this realm have any due remedy against any
person or persons, their heirs or assigns, that wrongfully detaineth or
withholdeth the same; (4) by occasion whereof much controversy, suit,
variance, and discord is like to insurge and ensue among the king's sub-
jects, to the great detriment, damage, and decay of many of them, if
convenient and speedy remedy therefore be not had and provided:

Sett. 2. "Wherefore it is ordained and enacted by our sovereign lord the
king, with the assent of the lords spiritual and temporal, and the commons,
in this present parliament assembled, and by the authority of the same,
that all and singular persons of this his said realm, or other his dominions,
of what estate, degree, or condition soever he or they be, shall fully,
truly, and effectually divide, set out, yield, or pay all and singular tithes
and offerings aforesaid, according to the lawful customs and usages of
parishes and places where such tithes or duties shall grow, arise, come, or
be due; (2) and in case that shall happen any person or persons, of
his or their ungodly or perverse will and mind, to detain and withhold
any of the said tithes or offerings, or any part or parcel thereof, then
the person or persons, being ecclesiastical or lay person, having cause to
demand or have the said tithes or offerings, being thereby wronged or
grieved, shall and may convent the person or persons so offending
before the ordinary, his commissary, or other competent minister, or law-
ful judge of the place where such wrong shall be done, according to
the

This act is
confirmed and
enlarged by
2 & 3 Ed. 6,
c. 13.

Tithes shall
be paid ac-
cording to the
custom of the
parish where
they be due.

Cro. Eliz. 607.
The offender
convented be-
the

for the ordinary.

the ecclesiastical laws; (3) and in every such cause or matter of suit, the same ordinary, commissary, or other competent minister, or lawful judge, having the parties, or their lawful procurators before him or them, shall and may by virtue of this act proceed to the examination, hearing, and determination of every such cause or matter ordinarily or summarily, according to the course and process of the said ecclesiastical laws, and thereupon may give sentence accordingly.

The appellant shall pay costs of suit to the other party.
Cro. El. 178.

Señ. 3. "And in case that any of the parties, for any cause or matter concerning that suit, do appeal from the sentence, order, and definitive judgment of the said ordinary, or other competent judge, as is aforesaid, then the same judge, by virtue of this act, forthwith upon such appellation made, shall adjudge to the other party, the reasonable costs of his suit therein before expended, (2) and shall compel the same party appellant to satisfy and pay the same costs so adjudged by compulsory process, and censures of the said laws ecclesiastical, (3) taking surety of the other party to whom such costs shall be adjudged and paid, to restore the same costs to the party appellant, if after the principal cause of that suit of appeal shall be adjudged against the same party to whom the same costs shall be yielded; (4) and so every ordinary, or other competent judge ecclesiastical, by virtue of this act, shall adjudge costs to the other party upon every appeal to be made in any suit or cause of subtraction, or detention of any tithes, or offerings, or in any other suit to be made for or concerning the duty of such tithes or offerings.

The offender shall be bound by two justices of peace to obey the ordinary's sentence.

Señ. 4. "And further be it enacted by the authority aforesaid, That if any person or persons, after such sentence definitive given against them, obstinately and wilfully refuse for to pay their tithes, or duties, or such sums of money so adjudged, wherein they be condemned for the same, that then two justices of the peace for the same shire, whereof one to be of the *Quorum*, shall have authority by this act, upon information, certificate, or complaint to them made in writing by the said ecclesiastical judge that gave the same sentence, to cause the same party so refusing, to be attached, and committed to the next goal, and there to remain without bail or mainprize, till he or they shall have found sufficient sureties to be bound by recognizance, or otherwise, before the same justices, to the use of our sovereign lord the king, to perform the said definitive sentence and judgment."

STAT. 7 & 8 Will. 3, c. 6, [A. D. 1696, intituled] "An act for the more easy recovery of small tithes."

Continued
further for 7 years by 10 & 11 W. 3, c. 15.
and perpetuated by 3 & 4 Annæ c. 18, s. 1.

"For the more easy and effectual recovery of small tithes, and the value of them, where the same shall be unduly subtracted and detained; where the same do not amount to above the yearly value of forty shillings from any one person: be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, That all and every person and persons shall henceforth well and truly

truly set out and pay all and singular the tithes, commonly called small tithes, and compositions and agreements for the same, with all offerings, oblations, and obventions, to the several rectors, vicars, and other persons, to whom they are or shall be due, in their several parishes within this kingdom of *England*, and dominion of *Wales*, and town of *Berwick upon Tweed*, according to the rights, customs, and prescriptions commonly used within the said parishes respectively; and if any person or persons shall hereafter subtract or withdraw, or any ways fail in the true payment of small tithes, offerings, oblations, obventions, or compositions, as aforesaid, by the space of twenty days at most after demand thereof, then it shall and may be lawful for the person or persons, to whom the same shall be due, to make his or their complaint in writing to two or more of his majesty's justices of the peace within that county, riding, city, town, corporate, place, or division, where the same shall grow due; neither of which justices of peace is to be patron of the church or chapel whence the said tithes do or shall arise, nor any ways interested in such tithes, offerings, oblations, obventions, or compositions aforesaid.

Small tithes not paid in 20 days after demand, lawful to complain to two justices, not interested,

Sett. 2. " And be it further enacted by the authority aforesaid, That if hereafter any suit or complaint shall be brought to two or more justices of the peace as aforesaid, concerning small tithes, offerings, oblations, obventions, or compositions, as aforesaid, the said justices are hereby authorized and required to summon in writing under their hands and seals, by reasonable warning, every such person or persons against whom any complaint shall be made, as aforesaid; and after his or their appearance, or upon default of their appearance, the said warning or summons being proved before them upon oath, the said justices of peace, or any two or more of them, shall proceed to hear and determine the said complaint, and upon the proofs, evidences, and testimonies, produced before them, shall, in writing under their hands and seals, adjudge the case, and give such reasonable allowance and compensation for such tithes, oblations, and compositions, so subtracted or withheld, as they shall judge to be just and reasonable, and also such costs and charges, not exceeding ten shillings, as upon the merits of the cause shall appear just.

who may summon the persons complained of, and on default of appearance determine the complaint, and give allowance, with costs not exceeding 10s.

Sett. 3. " And be it further enacted, That if any person or persons shall refuse or neglect, by the space of ten days after notice given, to pay or satisfy any such sum of money, as upon such complaint and proceeding shall by two or more justices of the peace be adjudged as aforesaid, in every such case the constables and church-wardens of the said parish, or one of them, shall, by warrant under the hands and seals of the said justices to them directed, distrain the goods and chattels of the party so refusing or neglecting, as aforesaid, and after detaining them three days, in case the said sum so adjudged to be paid, together with reasonable charges for making and detaining the said distress, be not tendred or paid by the said party in the mean time, shall and may make public sale of the same, and pay to the party complaining so much of the money arising by such sale as may satisfy the said sum so adjudged, retaining to themselves, such

On refusal to pay in 10 days after notice, the constables, &c. may distrain, and after 3 days sell the same, and satisfy the sum and charges, rendering the overplus.

reasonable charges for making and keeping the said distress, as the said justice shall think fit, and shall render the overplus (if any be) to the owner.

Justices to administer an oath.

Seet. 4. “ Provided always, and be it enacted, That it shall and may be lawful for all justices of peace, in the examination of all matters offered to them by this act, to administer an oath or oaths to any witness or witnesses, where the same shall be necessary for their information, and for the better discovery of the truth.

Not to extend to *London*, nor any place otherwise settled by parliament.

Seet. 5. “ Provided also, and be it enacted, that this act or any thing herein contained, shall not extend to any tithes, oblations, payments, or obventions, within the city of *London*, or liberties thereof, nor to any other city or town corporate where the same are settled by an act of parliament in that case particularly made and provided.

No complaint to be heard, unless made within 2 years

Seet. 6. “ Provided also, and be it enacted, That no complaint for or concerning any small tithes, offerings, oblations, obventions, or compositions, hereafter due, shall be heard and determined by any justices of the peace, by virtue of this act, unless the complaint shall be made within the space of two years next after the times that the same tithes, oblations, obventions, and compositions did become due or payable, any thing in this act contained to the contrary notwithstanding.

Persons aggrieved to appeal to the sessions, who are to determine the matter.

Seet. 7. Provided also, and be it enacted, That any person finding him, her, or themselves aggrieved, by any judgment to be given by any two justices of the peace, shall and may appeal to the next general quarter sessions to be held for that county, riding, city, town corporate, or division, and the justices of the peace there present, or the major part of them, shall proceed finally to hear and determine the matter, and to reverse the said judgment, if they shall see cause; and if the justices

If judgment be confirmed, justices to give costs.

then present, or the major part of them, shall find cause to confirm the judgment given by the first two justices of the peace, they shall then decree the same by order of sessions, and shall also proceed to give such costs against the appellant, to be levied by distress and sale of the goods and chattels of the said appellant, as to them shall seem just and

No judgment to be removed, unless the title be in question.

reasonable; and no proceedings, or judgment had, or to be had by virtue of this act, shall be removed or superseded by virtue of any writ of *certiorari*, or other writ, out of his majesty's courts at *Westminster*, or any other court whatsoever, unless the title of such tithes, oblations, or obventions, shall be in question; any law, statute, custom, or usage to the contrary notwithstanding.

Persons complained of, insisting on any composition, &c. and giving security to pay costs, justices not to give judgment.

Seet. 8. “ Provided, always, and be it enacted, That where any person or persons complained of for subtracting or withholding any small tithes, or other duties aforesaid, shall, before the justices of the peace to whom such complaint is made, insist upon any prescription, composition, or *modus decimandi*, agreement or title, whereby he or she is or ought to be freed from payment of the said tithes, or other duties in question, and deliver the same in writing to the said justices of the peace, subscribed by him or her, and shall then give to the party complaining reasonable and sufficient security, to the satisfaction of the said justices, to pay all such

costs

costs and damages, as upon a trial at law to be had for that purpose, in any of his majesty's courts, having cognizance of that matter, shall be given against him, her, or them, in case the said prescription, composition, or *modus decimandi*, shall not upon the said trial be allowed, that in that case the said justices of the peace shall forbear to give any judgment in the matter; and that then or in such case the person and persons so complaining shall and may be at liberty to prosecute such person or persons for their said subtraction in any other court or courts whatsoever, where he, she, or they might have sued before the making of this act; any thing in this act to the contrary notwithstanding. And complainant may prosecute in any other court.

Sect. 9. And be it further enacted by the authority aforesaid, That every person and persons, who shall by virtue of this act obtain any judgment, or against whom any judgment shall be obtained before any justices of the peace out of sessions, for small tithes, oblations, obventions, or compositions, shall cause or procure the said judgment to be inrolled at the next general quarter session to be holden for the said county, city, riding, or division; and the clerk of the peace for the said county, city, riding, or division, is hereby required, upon tender thereof, to inroll the same, and that he shall not ask or receive for the inrollment of any one judgment any fee or reward exceeding one shilling; and that the judgment so inrolled, and satisfaction made by paying the same sum so adjudged, shall be a good bar to conclude the said rectors, vicars, and other persons, from any other remedy for the said small tithes, oblations, obventions, or compositions, for which the said judgment was obtained. Judgment to be inrolled at the next sessions by the clerk of the peace, and to bar vicars from any other remedy.

Sect. 10. "And be it further enacted by the authority aforesaid, That if any person or persons, against whom any such judgment or judgments shall be had, as aforesaid, shall remove out of the county, riding, city, or corporation, after judgment had, as aforesaid, and before the levying the sum or sums thereby adjudged to be levied, the justices of the peace who made the said judgment, or one of them, shall certify the same, under his or their hands and seals, to any justice of peace of such other county, city, or place, wherein the said person or persons shall be inhabitants; which said justice is hereby authorized and required, by warrant under his hand and seal, to be directed to the constables or church-wardens of the place, or one of them, to levy the sum or sums so adjudged to be levied, as aforesaid, upon the goods and chattels of such person or persons, as fully as the said other justices might have done, if he, she, or they, had not removed as aforesaid; which shall be paid according to the said judgment. Persons removing, justices may certify the judgment, and other justices by warrant may levy the sum adjudged.

Sect. 11. "Provided always, and be it enacted, That no vicar or other person shall have remedy to recover small tithes, or other dues aforesaid, which became or were due before the making of this act, unless complaint be made to the justices of the peace in form aforesaid, before the first day of *October*, which shall be in the year of our Lord, one thousand six hundred and ninety-six. Small tithes not to be recovered unless complaint be made before October, 1696.

Sect. 12. "And it is hereby declared and enacted, That the said justices of the peace, who shall hear and determine any of the matters aforesaid, Justices may give costs not exceeding 10s.

aforesaid, shall have power to give costs, not exceeding ten shillings, to the party prosecuted, if they shall find the complaint to be false and vexatious; which costs shall be levied in manner and form aforesaid.

If the plaintiff be nonsuit, person sued to have double costs. *Sect. 13.* "Provided also, and be it further enacted, That if any person or persons shall be sued for any thing done in execution of this act, and the plaintiff in such suit shall discontinue his action, or be nonsuit, or a verdict pass against him, that then, in any of the said cases, such person or persons shall recover double costs.

Suits for tithes not exceeding 40s. to have no benefit by this act. *Sect. 14.* "Provided always, That any clerk, or other person or persons, who shall begin any suit for recovery of small tithes, oblations, or obventions, not exceeding the value of forty shillings, in his majesty's court of Exchequer, or in any the ecclesiastical courts, shall have no benefit by this act, or any clause in it, for the same matter for which he or they have so sued.

Act to continue 3 years: made perpetual by 3 Ann. c. 18. *Sect. 15.* "Provided always, and be it further enacted, That this act shall continue for the space of three years, and from thence to the end of the next session of parliament, and no longer."

STAT. 7 & 8 W. 3, c. 34. See this act under title **Oaths**, page 218.

STAT. 1 Geo. 1, st. 2, c. 6, [A. D. 1714.] *Made among other purposes,* "for explaining and enforcing the said act, (7 & 8 Wil. 3, c. 34,) in relation to the payment of tithes and church rates."

Clause for the recovery of tithes, &c. from quakers, 7 & 8 W. 3, c. 34. *Sect. 2.* "And whereas by the said act made in the seventh year of the reign of king *William* the third, a remedy is provided for the recovery of tithes and church-rates, where any quaker should refuse to pay the same: Be it enacted by the authority aforesaid, That such remedy shall be and is hereby extended, and the like remedy shall and may be had and used against any quaker or quakers for the recovering of any tithes or rates, or any customary or other rights, dues, or payments belonging to any church or chapel, which of right by law and custom ought to be paid for the stipend or maintenance of any minister or curate officiating in any church or chapel; and any two or more justices of the peace of the same county or place, other than such justice of the peace as is patron of any such church or chapel, or any ways interested in the said tithes, upon complaint of any parson, vicar, curate, farmer, or proprietor of such tithes, or any church-warden or chapel-warden, or other person who ought to have, receive, or collect any such tithes, rates, dues, or payments, as aforesaid, are hereby authorized and required to summon in writing, under their hands and seals, by reasonable warning, such quaker or quakers, against whom such complaint shall be made, and after his or their appearance, or upon default of appearance, the said warning or summons being proved before them upon oath, to proceed to hear and determine the said complaint, and to make such order therein, as in the said act is limited or directed; and also to order such costs and charges, as they shall think reasonable, not exceeding ten shillings, as upon the merits

merits of the cause shall appear just; which order shall and may be so executed, and on such appeal may be reversed or affirmed by the general quarter-sessions of the county or place, with such costs and remedy for the same, and shall not be removed into any other court, unless the titles of such tithes, dues, or payments, shall be in question, in like manner as in and by the same act is limited and provided."

By *Stat. 27 Geo. 2, c. 20*, justices are to limit in their warrants of distress the time for sale of the distress, not less than four, nor more than eight days. See this act at large under title *Distress*, page 775.

Tobacco.

STAT. 12 Car. 2, c. 34, [*A. D. 1660, intituled*] "An act for prohibiting the planting, setting or sowing of Tobacco in *England* or *Ireland*."

"Your majesty's loyal and obedient subjects, the lords and commons in this present parliament assembled, considering of how great concern and importance it is, That the colonies and plantations of this kingdom in *America*, be defended, protected, maintained, and kept up, and that all due and possible encouragement be given unto them; and that not only in regard great and considerable dominions and countries have been thereby gained, and added to the imperial crown of this realm, but for that the strength and welfare of this kingdom do very much depend upon them, in regard of the employment of a very considerable part of its shipping and seamen, and of the vent of very great quantities of its native commodities and manufactures, as also of its supply with several considerable commodities which it was wont formerly to have only from foreigners, and at far dearer rates: (2) And forasmuch as tobacco is one of the main products of several of those plantations, and upon which their welfare and subsistence, and the navigation of this kingdom, and vent of its commodities thither, do much depend; and in regard it is found by experience, That the tobaccos planted in these parts are not so good and wholesome for the takers thereof; and that by the planting thereof, your majesty is deprived of a considerable part of your revenue arising by customs upon imported tobacco; do most humbly pray, that it may be enacted by your majesty: (3) And it is hereby enacted by the king's most excellent majesty, and the lords and commons in this present parliament assembled, and by the authority of the same, That no person or persons whatsoever, shall or do from and after the first day of *January*, in the year of our Lord one thousand six hundred and sixty, set, plant, improve

Importance of
the planta-
tions of
America.

No person
after the first
of *January*,
of *January*,
1660, shall

set or plant any tobacco. improve to grow, make or cure any tobacco either in seed, plant or otherwise, in or upon any ground, earth, field, or place within the kingdom of *England*, dominion of *Wales*, islands of *Guernsey*, or *Jersey*, or town of *Berwick upon Tweed*, or in the kingdom of *Ireland*, under the penalty made 10l. by 15 *Car. 2, c. 7*, of the forfeiture of all such tobacco, or the value thereof, or of the sum of forty shillings for every rod or pole of ground so planted, set or sown, as aforesaid, and so proportionably for a greater or lesser quantity of ground; one moiety thereof to his majesty, his heirs and successors; and the other moiety to him or them that shall sue for the same, to be recovered by bill, plaint or information in any court of record, wherein no essoin, protection, or wager in law shall be allowed.

All sheriffs and other officers may destroy any tobacco planted contrary to this act.

Seet. 2. "And it is hereby further enacted, That all sheriffs, justices of the peace, mayors, bailiffs, constables, and every of them, upon information or complaint made unto them, or any of them, by any the officers of the customs, or by any other person or persons whatsoever, That there is any tobacco set, sown, planted, or growing within their jurisdictions or precincts, contrary to this act, shall within ten days after such information or complaint, cause to be burnt, plucked up, consumed, or utterly destroyed, all such tobacco so set, sown, planted or growing.

The penalty of any person resisting this act.

Seet. 3. "And it is hereby further enacted, That in case any person or persons shall resist, or make forcible opposition against any person or persons in the due and thorough execution of this act, that every such person or persons, for every such offence, shall forfeit the sum of five pounds to be divided and recovered in manner aforesaid. (2) And in case any person or persons shall not pay the sums of money by them to be paid by virtue of this act, That in every such case, distress shall be made, and sale thereof, returning the overplus to the owners: And in case no distress be to be found, That then every such party shall be committed to the common gaol in the county where such offence shall be committed, there to remain for the space of two months without bail or mainprize.

Proviso for private gardens.

Seet. 4. "Provided always, and it is hereby enacted, That this act, nor any thing therein contained, shall extend to the hindring of the planting of tobacco in any physick-garden of either university, or in any other private garden for physick or chirurgery only, so as the quantity so planted exceed not one half of one pole in any one place or garden." 13 *Car. 2, stat. 1, cap. 14.* 5 *Geo. 1, c. 11, s. 19.*

STAT. 15 *Car. 2, c. 7*, [*A. D. 1663, intituled,*] "An act for the encouragement of trade."

The further penalty for planting tobacco in England, 12 *Car. 2, c. 34.*

Seet. 18. "And forasmuch as planting and making tobacco within the kingdom of *England* doth continue and increase, to the apparent loss of his said majesty in his customs, the discouragement of the *English* plantations in the parts beyond the seas, and prejudice of this kingdom in general, notwithstanding an act of parliament made in the twelfth year of his said majesty's reign for prevention thereof, intituled, *An act for prohibiting the planting, setting or sowing of tobacco in England and Ireland:*

(2) And

(2) And forasmuch as it is found by experience, that the reason why the said planting and making of tobacco doth continue, is, That the penalties prescribed and appointed by that law are so little, as have neither power or effect over the transgressors thereof; (3) For remedy therefore of so great an evil, Be it enacted by the authority aforesaid, That all and every the person or persons whatsoever, that do, or shall at any time hereafter, set, plant or sow any tobacco in seed, plant or otherwise, in or upon any ground, field, earth or place within the kingdom of *England*, dominion of *Wales*, islands of *Guernsey* and *Jersey*, or town of *Berwick upon Tweed*, or kingdom of *Ireland*, shall over and above the penalty of the said act for that purpose ordained for every such offence forfeit and pay the sum of ten pounds for every rod or pole of ground that he or they shall so plant, set or sow with tobacco, and so proportionably for a greater or lesser quantity of ground; one third part thereof to the king's majesty; one other third part thereof to the use of the poor of such respective parish or parishes wherein such tobacco shall be so planted, set or sowed; and the other third part thereof to him or them that shall sue for the same, to be recovered by action of debt, bill, plaint or information in any of his said majesty's courts of record at *Westminster*, wherein no essoin, protection or wager of law shall be allowed.

Seet. 19. "And it is hereby further enacted, That in case any person or persons shall resist or make forcible opposition against any person or persons in the due and through execution of the said act of the twelfth of his said majesty's reign, that he, she or they so resisting and making forcible opposition, shall over and above the penalties therein mentioned for such offences, be committed to the common gaol of the county where such offence shall be committed, there to remain without bail or mainprize, until he, she or they have entred into a recognizance to his majesty, his heirs and successors, with two sufficient sureties, of ten pounds penalty, not to do or commit the like offence again.

Sect. 20. "Provided always, That this act, nor any thing therein contained, shall not extend to the hindrance or prejudice of planting tobacco in any physick-garden of either of the universities, or any other private garden for chirurgery, so as the quantity so planted exceed not the half of one pole in any one place or garden." Proviso for tobacco planted in physick-gardens.

STAT. 22 & 23 *Car.* 2, c. 26, [*A. D.* 1670, intituled,] "An act to prevent the planting of tobacco in *England*, and for regulating the plantation trade."

"Whereas the sowing, setting, planting, and curing of tobacco within divers parts of the kingdom of *England*, doth continue and increase, to the apparent loss of his majesty's customs, and the discouragement of his majesty's plantations in *America*, and great prejudice of the trade and navigation of this realm, and the vent of its commodities thither, notwithstanding an act of parliament made in the twelfth year of his majesty's reign that now is, for the prevention thereof, intituled, *An act for prohibiting* Husbandry. 12 Ca. 2, c. 34.

15 Ca. 2, c. 7. *biting the planting, setting or sowing of tobacco in England and Ireland; and also one other act of this present parliament, made in the fifteenth year of his said majesty's reign, intituled, An act for the encouragement of trade.*

Justices of the peace are to command all constables, &c. to make a return to them of what tobacco is planted, and upon whose land.

Sect. 2. "And forasmuch as the remedies and provisions by those laws are found not large enough to obviate and prevent the planting thereof; (2) Be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, That from and after the first day of *May*, which shall be in the year of our Lord one thousand six hundred seventy and one, all justices of the peace, within their several limits and jurisdictions, shall and do a month before every general quarter-sessions to be holden for their respective counties, issue forth their warrants to all high constables, petty constables, and tithingmen, within their several limits, thereby requiring the said high constables, petty constables and tithingmen, and every of them, to make diligent search and inquisition, what tobacco is then sown, set, planted, growing, curing, cured, or made within their several and respective limits and jurisdictions, and by whom; and to make a true and lawful presentment in writing upon oath, at the next general quarter-sessions to be holden for such county, of the names of all such persons as have sown, set, planted, cured or made any tobacco, and what the full quantity of land is, or was sown, set, or planted therewith, and who are the immediate tenant or tenants, or present occupiers of the land so sown, set or planted, who are and shall be deemed planters thereof, to all intents and purposes.

Which presentment being filed, shall be a sufficient conviction.

Except upon notice, it shall be traversed.

Sect. 3. "Which said presentment upon oath, shall be received and filed by the clerk of the peace of the said county, in open sessions; and after such receipt and filing, shall be a sufficient conviction in law to all intents and purposes, of all such persons as shall be so presented for the sowing, setting, planting, improving to grow, making, or curing tobacco, either in seed, plant, leaf, or otherwise, contrary to the said recited acts, or either of them; unless such person or persons so presented (having notice given to him or them of such presentment made, by the delivery of a copy of such presentment to him or them, or by leaving a copy of such presentment at his or their dwelling-house or houses, or usual place of abode, in the presence of one or more credible witnesses, ten days at the least before the next quarter-sessions) shall at the quarter-sessions next after such notice shall be given to him or them traverse such presentment, and find sufficient sureties for the prosecuting and trying such traverse, at the quarter-sessions to be holden for the said county, next after such traverse shall be entered or made.

Power given to all officers, &c. to pull up and destroy all the plants, &c.

Sect. 4. "And it is hereby further enacted, That all constables, tithingmen, bailiffs and other publick officers, shall and do within their respective jurisdictions, from time to time, as often as occasion shall require, within fourteen days after warrant from two or more of the justices of the peace within such county, town, city or place to them, calling to their assistance such person or persons as they and every of them shall find convenient and necessary

necessary, pluck up, burn, consume, tear in pieces, and utterly destroy all tobacco seed, plant, leaf planted, sowed or growing in any field, earth or ground.

Sect. 5. “ And if any such tobacco shall be suffered or permitted to grow, or be consumed in seed, plant or leaf, in any township, tithing, parish, hamlet or place, by the space of fourteen days after the receipt of such warrant or warrants, by the said constables, tithingmen, bailiffs, or other publick officers of the respective townships, tithings, parishes or hamlets, as aforesaid, That then such constables, tithingmen, bailiffs, or other publick officers respectively, shall for every such offence forfeit and pay the sum of five shillings for every rod, perch or pole of ground so set, planted or sowed with tobacco, and so proportionably for a greater or lesser quantity of ground; one moiety thereof to the king’s majesty, and the other moiety to him or them that shall sue for the same, to be recovered by action of debt, bill, plaint or information, in any of his majesty’s courts of record at *Westminster*. The penalty of officers not doing their duty in destroying of it.

Sect. 6. “ And it is hereby further enacted, That in case any person or persons shall refuse or neglect to aid or assist (being thereunto required) any constable, bailiff or other publick officer, in the due execution of this act, That every such person or persons for every such offence, upon conviction thereof made before two justices of the peace of the said county where such offence shall be committed, shall forfeit and pay the sum of five shillings, to be levied by warrant from the said justices, by distress and sale of the offender’s goods; and in case no distress can be found, then every such offender shall be committed to the common gaol of the said county, there to remain for the space of one week, without bail or mainprize. The penalty for refusing to assist the officers.

Sect. 7. “ And if any person or persons whatsoever, shall forcibly resist any constable, bailiff, or other public officer, or other person or persons whatsoever, in the due execution of this act, That then every such person for every such offence, upon conviction thereof made before two justices of the peace of the said county where such offence shall be committed, shall forfeit and pay the sum of five pounds, to be levied by warrant from the said justices, by distress and sale of the offender’s goods; and in case no distress can be found, then every such offender shall be committed to the common gaol of the said county, there to remain for the space of three months, without bail or mainprize. The forfeiture for resisting the officers.

Sect. 8. “ And be it further enacted by the authority aforesaid, That if any action, plaint, suit, or information, shall be commenced or prosecuted against any person or persons, for what he or they shall do in pursuance or execution of this act, or either of the recited acts, such person or persons so sued in any court whatsoever, shall or may plead the general issue, not guilty; and upon any issue joined, may give this act, or the said recited acts, or either of them, and the special matter in evidence: (2) And if the plaintiff or prosecutor shall become nonsuit, or forbear further prosecution, or suffer discontinuance, or if a verdict shall pass against him, the defendant or defendants shall recover their costs, The officer, to any action brought against him, may plead not guilty. If judgment pass for him, he shall recover

cover double which they shall have the like remedy, as in cases where costs are given by costs. law to the defendants.

A saving for tobacco plant- ed in the phy- sick gardens. Sect. 9. " Provided always, and it is hereby enacted, That this act, nor any thing therein contained, shall extend to the hindring of the planting of tobacco in any physick garden of either university, or in any other private garden for physick or chirurgery only, so as the quantity so planted exceed not one half of one pole, in any one place or garden."

STAT. 1 Geo. 1, c. 46, [A. D. 1715, intituled] " An act to prevent the mischiefs by manufacturing leaves or other things to resemble tobacco, and the abuses in making and mixing of snuff,"

" Whereas tobacco is one of the chief products of *Virginia* and *Maryland*, upon which their welfare and subsistence doth much depend; and by the importation thereof the navigation and trade of this kingdom, and the publick revenues of the same, are very much increased: And whereas it is found by experience, that of late several evil persons have cut, cured, manufactured, and sold walnut-tree leaves, hop leaves, sycamore leaves, or other leaves, herbs, plants, or materials, resembling tobacco of the growth or product of the *British* plantations, to the prejudice of his majesty's plantations in *America*, and of the navigation and trade of this kingdom, and of the publick revenues arising upon tobacco: For remedy whereof for the future, Be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, That all and every person and persons whosoever, who at any time or times after the twentieth day of *June*, in the year of our Lord one thousand seven hundred and sixteen, shall cut, or cause or procure to be cut, any walnut-tree leaves, hop leaves, sycamore leaves, or any other leaves, herbs, plants, or materials whatsoever (not being tobacco leaves or plants) into the form or in imitation of any the usual sizes or cuts, which tobacco has been or shall be cut into, for sale, or shall colour or cure, or cause or procure to be coloured or cured any such leaves, herbs, plants, or materials to make the same resemble tobacco, for sale, or shall sell, or cause or procure to be sold, or agree or offer to sell knowingly any such leaves, herbs, plants, or materials, mixed or unmixed with tobacco, as if the same were tobacco, shall for every pound weight of such leaves, herbs, plants, or materials, so cut, coloured, cured, sold, or agreed for, or knowingly offered to sale, and for every pound weight of such mixture, as aforesaid, forfeit and lose the sum of five shillings, and after that rate for a greater or lesser quantity; that is to say, one moiety or half-part thereof to the use of his majesty, his heirs and successors (he or they bearing the charge of prosecution out of the moiety so accruing to the crown, and not otherwise) and the other moiety or half part thereof to the use of such person or persons as will inform or sue for the same, to be recovered (with full costs of suit) by action of debt, bill, plaint, or information in any his majesty's courts of record

After June 20, 1716, walnut-tree leaves, &c. shall not be cut with tobacco.

Penalty of 5s. for every pound offered to sale, to king and prosecutor.

record at *Westminster*, or in the Exchequer of *Scotland*, wherein no effoin, protection, wager of law, or more than one imparlance shall be allowed.

Sect. 2. “ And be it enacted by the authority aforesaid, That all and every person and persons whatsoever, who at any time or times after the said twentieth day of *June*, in the year of our Lord one thousand seven hundred and sixteen, shall export or cause to be exported, or shall lade or put on board, or cause or procure to be laden or put on board for exportation, any such leaves, herbs, plants, or materials, or such mixture, as aforesaid, or endeavour to obtain a drawback for the same, as if the same were tobacco which had paid or secured his majesty’s duties thereupon, shall, for every such offence, forfeit and lose the sum of five shillings for every pound weight, and proportionably for a greater or lesser quantity, over and above all other penalties which may be inflicted for such offence by any law now in force, to be recovered and distributed in such manner as aforesaid. Like penalty for exportation.

Sect. 3. “ And be it also enacted by the authority aforesaid, That all the leaves, herbs, plants, and materials, so cut, coloured, cured, or manufactured, sold, contracted for, or knowingly offered to sale, as aforesaid, and all such mixtures, as aforesaid, and all engines, utensils, and tools, made use of in the cutting, colouring, curing or manufacturing the same, or prepared for such use, shall and may be searched for and seized by any officer of the customs, or by any person or persons thereunto specially authorized by writing under the hands and seals of the commissioners of the Treasury, or any three or more of them, or of the lord-treasurer for the time being, or of the commissioners of the customs in *England* or *Scotland* respectively, or any three or more of them for the time being. Such leaves, &c. may be search’d for and seized.

Secd. 4. “ Provided always, and it is hereby enacted, That no house or warehouse whatsoever shall be opened to search for, or seize such leaves, herbs, plants, materials, or mixtures, or such engines, utensils, or tools, but at seasonable hours, and not without a special warrant first had and obtained from two or more justices of the peace of the county or place where such search is to be made, and that the leaves, herbs, plants, and materials, and the said mixtures, engines, utensils, and tools, which shall, at any time or times, be found and seized within the limits of any port, or within six miles of the same, shall be brought to the next custom-house warehouse; and if found and seized at any greater distance from any port, shall be secured by order of any two justices of peace of the county or place where they shall be found, at the king’s charge, till the cause of such seizure shall be determined by the justices of peace in their quarter-sessions; and that the cause of every such seizure shall be heard and determined at the next quarter-sessions, or (at farthest) at the second quarter-sessions after such seizure made; and all such leaves, herbs, plants, materials, mixtures, engines, utensils, and tools (after condemnation or recovery by judgment of such sessions) shall be openly burnt or destroyed by order of the same at his majesty’s charge. Search to be made at seasonable hours, and not without warrant from two justices. The leaves, &c. seized to be brought to the Custom-house, or secured by order of the justices. The cause of seizure to be determined by quarter-sessions; and leaves, &c. to be burnt.

Secd. 5. “ And it is hereby further enacted, That all servants and labourers which shall be employed in the cutting, colouring, curing, or manu- Punishment of servants, &c. employed

in cutting or
selling such
leaves.

manufacturing any such leaves, herbs, plants, or materials, to resemble tobacco, or in the making any such mixture, as aforesaid, or in knowingly vending the same, and shall be convicted thereof by the oath of any one or more credible persons, before any two justices of the peace of the county or place where the offence shall be committed, shall or may, by order of such justices, be committed to the common gaol or house of correction, there to remain and be kept to hard labour for any time not exceeding six months, without bail or mainprize.

Persons sued
may plead
the general
issue, and
shall recover
treble costs.

Sect. 6. "And be it likewise enacted by the authority aforesaid, That if any person or persons shall be sued or prosecuted for what he or they shall do in pursuance or execution of this act, such person or persons may plead the general issue (not guilty) and after issue joined may give this act and the special matter in evidence; and if the plaintiff or prosecutor shall be nonsuit, or forbear further prosecution, or suffer discontinuance, or if a verdict pass against him, the defendant shall recover treble costs, for which he shall have the like remedy as in cases where costs by law are given to defendants.

Mixing or
colouring
snuff with
oker, &c.

Sect. 7. "And be it further enacted by the authority aforesaid, That if any person or persons shall, at any time after the said twentieth day of *June*, in the year of our Lord one thousand seven hundred and sixteen, make, mix, or colour, or cause to be made, mixed, or coloured, any sort of snuff with any sort of okers, umber, or any other kind of colouring, except with water tinged with the colouring, commonly called *Venetian Red* only; or shall mix, or cause to be mixed with any sort of snuff, any fustick, or yellow ebony, touchwood, or any other sort of wood, or any dirt, or sand, or dust sifted from tobacco; or shall knowingly sell, or expose to sale, any snuff so made, mixed, or coloured, as aforesaid, every such person so offending, shall, for every pound-weight of snuff, so made, mixed, or coloured, forfeit the said snuff, and likewise the sum of three pounds, and proportionably for any greater or lesser quantity, to be recovered by action of debt, bill, plaint, or information, in any of his majesty's courts of record at *Westminster*, or in his majesty's court of Exchequer in *Scotland*, wherein no essoin, privilege, protection, or wager of law shall be allowed, nor any more than one imparlance; one moiety of which forfeitures shall be to the use of his majesty, his heirs and successors, and the other moiety to the use of such person or persons who shall seize, inform, or sue for the same."

forfeits the
snuff, and 3l.
for every
pound-weight.
By 5 Geo. 1,
c. 11, sect. 22,
this act is ex-
tended to
other abuses
relating to
snuff. How
to be reco-
vered and
disposed.

STAT. 5 Geo. 1, c. 11. [A. D. 1718.] *Made, among other purposes,*
"for the more effectual preventing of frauds relating to the customs."

Sect. 22. And whereas an act passed in the first year of the reign of his present majesty, [intituled, *An act to prevent the mischiefs by manufacturing leaves, or other things, to resemble tobacco, and the abuses in making and mixing of snuff*] and whereas the provisions made by the said act, so far as relates to snuff, have proved ineffectual, by reason of some doubts which have arisen, whether the powers granted by the said act to prevent the mischiefs

1 G. 1, f. 2,
c. 46.

by manufacturing leaves, or other things to resemble tobacco, can be extended to such persons which shall commit abuses in making and mixing of snuff: be it therefore enacted by the authority aforesaid, That the said recited act made in the first year of the reign of his present majesty, and all the clauses, rules, directions, powers, matters, and things, therein contained, shall extend and be in full force against any person or persons who shall, after the five and twentieth day of *March*, one thousand seven hundred and nineteen, make, mix, or colour, or shall cause to be made, mixed, or coloured, any sort of snuff with any sort of oakers, umber, or any other kind of colouring (except water tinged with *Venetian* red only) or shall mix, or cause to be mixed with any sort of snuff, fustick, or yellow ebony, touchwood, or any other sort of wood, or any dirt, sand, or small tobacco sifted from tobacco, commonly called or known by the name of tobacco-dust, as if the said recited act, and all the clauses, rules, directions, matters and things therein contained, had been re-enacted in the body of this present act against the offender or offenders in making, mixing, and colouring of snuff, as aforesaid: any law, statute, matter, or thing to the contrary notwithstanding."

All the clauses in the act 1 Geo. I, relating to snuff, to extend to oakers, umber, or other colouring, fustick, &c. mixt with snuff.

STAT. 24 *Geo. 2*, c. 41. [*A. D.* 1751, intituled] "An act for the more effectual securing the duties upon tobacco."

SECT. 22. "And be it further enacted by the authority aforesaid, That from and after the said twenty-ninth day of *September*, one thousand seven hundred and fifty one, no tobacco or tobacco stalks exceeding twenty-four pounds weight, nor any snuff exceeding ten pounds weight (which shall have been removed or carried coastwise, or by water, from the port or place of importation in *Great-Britain*, to any other port or place within this kingdom) shall afterwards be removed or carried from thence by land to any other place whatsoever, without a certificate being first had and obtained from the collector and comptroller, or the chief officers of the customs at the port or place to which such goods were carried coastwise, or by water, as aforesaid, that it appears to them by the entries of the certificate or certificates in their books which came with the goods from the port or place of importation, that the duties thereof were paid or secured at the said port or place of importation; and also in what ship or vessel, ships or vessels, such goods and every part thereof came or were brought coastwise, by water, as aforesaid, and the time when; and also that the person or persons who shall apply to them for the same, had made oath to the truth thereof; which said certificate such officers are hereby required and directed, after writing the same off their books, to grant and deliver to every person and persons who shall apply to them for the same, and shall immediately transmit a duplicate of such certificate to the person appointed by the lord high treasurer, or the commissioners of the Treasury, for the time being, for keeping the accounts herein after mentioned; and that before any such tobacco, tobacco stalks or snuff for which such certificate is granted, shall be removed or carried by land as aforesaid, the proprietor

No tobacco, stalks or snuff, above a certain weight, carried coastwise, to be afterwards removed by land, without a certificate of the duties being paid.

Officers to grant such certificate, and to transmit a duplicate to the officer appointed by the Treasury.

Proprietor to insert on the back of the certificate, the packages, &c. proprietor thereof, or his factor or agent, shall describe and insert on the back of such certificate, in a fair and legible manner, the names of each particular package in which such goods are contained, together with the particular marks and numbers set on each package, and also the true and exact weight of each particular species of such goods contained in each particular package, and the place and places from whence the same were brought, and to which they are to be carried and conveyed, and the name of the person to whom the same shall be sent, to which such proprietor, factor or agent shall subscribe his, her or their name or names, and make oath to the truth thereof; and if any tobacco, tobacco stalks or snuff, exceeding the respective quantities before mentioned, shall, from and after the said twenty-ninth day of *September*, one thousand seven hundred and fifty-one, be found removing by land from the port or place of its importation, without such certificate therewith as is herein before directed to be granted by the proper officers; or if upon examination it shall appear that such certificate is forged and counterfeited, all such tobacco, tobacco stalks and snuff, and the casks, chests, cases or other package containing the same, together with the horses, cattle, carts, waggons, and all other carriages whatsoever employed, or in any wise made use of in the removing, or carriage or conveyance of such tobacco, tobacco stalks and snuff, or any or either of them, shall be forfeited and lost, and shall and may be seized and prosecuted by any officer or officers of the customs, in the manner herein after directed; and the carrier or other person employed or intrusted in the removing, carrying or conveying such goods, or any of them, shall, besides the loss of his cattle and carriages, also forfeit and lose the sum of ten pounds, and be committed to the county gaol for one month, by any justice of the peace for the county where the offence is committed or the offender shall be found; and if any person or persons whatsoever shall counterfeit, forge, erase or in any wise alter any such certificates or duplicate thereof, as are directed by this act, or shall cause or procure the same or either of them to be counterfeited, erased or altered in any respect, he, she or they so offending shall forfeit and lose the sum of one hundred pounds for every offence, to be sued for, recovered, levied and divided in the manner as herein after is expressed."

and make oath thereof.

Penalty of removing tobacco without certificate, &c.

and of counterfeiting thereof.

Transportation.

STAT. 4 Geo. 1, c. 11. See this act under *Larceny*.

STAT. 6 Geo. 1, c. 23. [*A. D.* 1719.] *Made, among other purposes,*
 "for the more effectual transportation of felons."

“Whereas the laws in being have not yet proved effectual to the suppressing of robbery, burglary, and other felonies, and to the transportation of felons, and some of the said laws wanting to be amended and enforced: Be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that all the powers and authorities which are in and by an act made in the fourth year of the reign of his present majesty, [intituled, *An act for the further preventing robbery, burglary, and other felonies, and for the more effectual transportation of felons, and unlawful exporters of wool, and for declaring the law upon some points relating to pirates,*] given to any court before whom any felons and offenders, tried for and convicted of any offences for which they may be sent or transported to any of his majesty's colonies or plantations in *America*, shall and may be observed and executed by any other subsequent court with like authority, held for the same county, riding, division, or liberty, where such felons or offenders were or shall be tried and convicted, notwithstanding such other subsequent court shall happen to be held at or in any other town or place than that wherein such trials or convictions were or shall be.

SecT. 2. “Provided always, and it is further enacted by the authority aforesaid, That the court before whom such felons or offenders (who may, by virtue of the said recited act, or by this present act, be transported, as aforesaid) were or shall be convicted, or any other court held with the like authority for the same county, riding, division, liberty, or place, wherein they were or shall be so convicted, as aforesaid, may nominate and appoint, if they shall think fit, two or more justices of the peace of and for the said county, riding, division, liberty, or place, where such offenders were or shall be convicted, who shall have power and authority to contract with any person or persons for the performance of the transportation of such felons and offenders, who by order of such court or courts are to be sent to any of the colonies and plantations aforesaid, and to order such and the like sufficient security (as the said recited act directs to be taken by order of court) and also to cause such felons, pursuant to such contracts, to be delivered by the respective gaolers in whose custody they are, shall, or may be, to the person or persons contracting for them, or to his or their assigns; which said contracts and security shall, from time to time, be certified by the justices, who shall make and take the same, to the next court held with the like authority for the said county, riding, division, liberty, or place, where such felons were or shall be convicted, to be filed and kept amongst the records of such court.

SecT. 3. “And it is further enacted by the authority aforesaid, That all charges in and about making the contracts, taking securities, and conveying of felons, in order to be transported, by virtue of this or the said recited act, shall be borne by each county, riding, division, liberty, or place, for which the court was held that ordered such felon or felons, offender or offenders, to be transported; and their respective treasurer or

All the powers given by 4 Geo. 1. c. 11, to any court by whom any felons convicted may be transported, may be executed by any subsequent court, held for the same county, &c. though at another place.

Such court may appoint two justices of the county, &c. to contract with any persons for the transportation of such felons; and may order the like security, and cause the felons to be delivered to the persons contracting.

The contracts to be certified to the next court.

Charges about contracts, &c. to be borne by each county, &c. to be paid by the treasurer.

treasurers shall, by order of the justices of the peace in their respective general quarter-sessions, pay all such charges and expences to such person or persons as shall be employed for the purposes aforesaid.

Security for transportation to be in the name of the clerks of the peace, who shall prosecute in their own names :

Seet. 4. “ And it is further enacted by the authority aforesaid, That all securities for transportation hereafter to be taken, pursuant to this or the said former act, shall be by bond, in the name of the respective clerks of the peace of the county, riding, division, or place, as aforesaid ; which said clerks of the peace, and their successors, shall, from time to time, prosecute such bonds in their own names, to which purpose they shall be deemed and taken to be a body corporate, and be paid all such costs, charges, and expences, as they or any of them shall sustain or expend in any such suit, as the said justices of the peace shall, at their general quarter-sessions of the peace, direct for the penalty of such bond, or otherwise howsoever by reason thereof, out of the publick stock, and by the respective treasurer or treasurers, as aforesaid, and that all monies recovered on any such security or bond entered into, as aforesaid, shall be to and for the use of the respective county, riding, division, and place, and be paid to such respective treasurer or treasurers, as aforesaid, to be part of the publick stock of such county, riding, division, liberty, or place, as aforesaid.

and monies recovered on such bonds shall be to the use of the county, &c.

Persons contracting for transportation may secure such felons as they shall think fit :

Seet. 5. “ And it is further enacted by the authority aforesaid, That the person or persons so contracting, as aforesaid, and to whom any such felons or offenders shall be delivered in order to be transported, as aforesaid, or any person or persons directed by the said justices (impowered to contract, as aforesaid) or their assigns, may, in such manner as they shall think fit, carry and secure the said felons and offenders in and through any county and counties of *Great-Britain* whatsoever, toward the sea-port from whence they are to be transported, as aforesaid ; and that if any person or persons shall rescue such felons or offenders, or any of them, he, she, and they, so rescuing, or aiding or assisting such felons or offenders, or any of them, in making their escape from such person or persons as shall have them in their custody, as aforesaid, shall be deemed and adjudged guilty of felony, and shall suffer death as in cases of felony, without benefit of clergy.

and rescuing them, shall be guilty of felony.

Felons ordered for transportation, being afterwards at large before the expiration of the term, shall suffer death.

Seet. 6. “ And whereas some felons ordered for transportation according to law, have already, and others may come on shore, and return to *Great-Britain*, before they have been actually transported to *America*, or may break gaol, or escape before such transportation : Be it further enacted by the authority aforesaid, That if any felon or felons, who have been or shall be ordered for transportation by this or any other act, shall be afterwards at large within any part of this kingdom of *Great-Britain*, without some lawful cause, before the expiration of the term for which such felon or felons was, were, or shall be ordered to be transported, all and every such person and persons, being thereof lawfully convicted, shall suffer death as in cases of felony, without benefit of clergy.

Where such offenders may

Seet. 7. “ And to the intent that such conviction may be with as little trouble and expence as possible, Be it further enacted by the authority aforesaid,

aforesaid, That such offender or offenders may be tried either before justices of assize, oyer and terminer, or gaol-delivery for the county, city or liberty, where, he, she, or they shall be apprehended and taken, or before justices of assize, oyer and terminer, or gaol-delivery for that county, city, or place, from whence he, she, or they were ordered to be transported; and that the clerk of the assize and clerk of the peace where such orders of transportation shall be made, and their successors for the time being, shall, at the request of the prosecutor, or any other in his majesty's behalf, certify a transcript briefly and in few words, containing the effect and tenor of every indictment and conviction of such man or woman, and of the order or contract for his or her transportation, to the justices of assize, oyer and terminer, or gaol-delivery, where such man or woman shall be indicted (not taking for the same above the sum of two shillings and six-pence) which certificate being produced in court shall be a sufficient proof that such person or persons have before been convicted and ordered to be transported.

STAT. 16 Geo. 2, c. 15, [A. D. 1743, intituled,] "An act for the more easy and effectual conviction of offenders found at large within the kingdom of *Great-Britain*, after they have been ordered for transportation."

"Whereas many felons and other offenders already ordered, or hereafter to be ordered for transportation, or who have upon certain conditions agreed to transport themselves, either for life, or for some term or number of years, according to law, have already or hereafter may come on shore, or return into *Great-Britain*, before they have been actually transported or transported themselves to *America*, or have already, or may hereafter break gaol or escape before such transportation: and whereas many of the offenders aforesaid have escaped by reason of the great expence that is necessary for prosecuting such offenders to conviction; for remedy whereof may it please your most excellent majesty that it may be enacted, and be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that if any felon or other offender already ordered, or hereafter to be ordered for transportation, or who hath already or hereafter shall agree to transport him or herself on certain conditions, to any of his majesty's colonies and plantations in *America*, either for life, or any number of years, shall be afterwards at large within any part of the kingdom of *Great-Britain*, without some lawful cause, before the expiration of the term for which he or she were so ordered to be transported, or had so agreed to transport him or herself, all and every such person or persons being thereof lawfully convicted, shall suffer death as in cases of felony, without benefit of clergy.

Convicts not transporting themselves, or returning before their time, to suffer death.

SECT. 2. "And be it further enacted by the authority aforesaid, That Manner of every such offender or offenders shall be tried for any of the offences aforesaid, before such judges, and in such manner, and the same evidence made use of, for his or her conviction, as is directed in and by the statute made

trying convicts returned from trans-

portation.
6 Geo. 1.
c. 23.

in the sixth year of the reign of his late majesty king George the first, intituled, *An act for the further preventing robbery and burglary, and other felonies, and for the more effectual transportation of felons*, in cases of felons returning from transportation.

Reward on
conviction of
offenders.

Seet. 3. "And for the encouragement of such as shall prosecute to conviction any of the offenders aforesaid; be it further enacted by the authority aforesaid, That whoever shall discover, apprehend, and prosecute to conviction of felony without benefit of clergy, any such offender or offenders so found at large within the kingdom of *Great-Britain*, shall be intituled to a reward of the sum of twenty pounds, for every such offender so convicted as aforesaid, and shall have the like certificate and like payments made without fee or reward, as any person or persons may be intituled unto for the apprehending, prosecuting, and convicting of highwaymen, by any law or laws for that purpose."

By *Stat.* 16 Geo. 2, c. 1, Persons assisting felons to escape from on shipboard, shall be transported for seven years. See this act at large under *Escape*.

Treason.

STAT. 25 Ed. 3, Stat. 5, c. 2. [*A. D.* 1350, intituled,] "A declaration which offences shall be adjudged treason."

1 H. 4, c. 10. "Item, Whereas divers opinions have been before this time in what case
Kelyng, 20. treason shall be laid, and in what not; (2) the king, at the request of
3 Inst. 1, 6, the lords and of the commons, hath made a declaration in the man-
113. ner as hereafter followeth; that is to say, When a man doth compass
8 Co. 28. or imagine the death of our lord the king, or of our lady his queen,
Dyer, 98, 298. or of their eldest son and heir; (3) or if a man do violate the king's
Bro. Treason, companion, or the king's eldest daughter unmarried, or the wife of
1, 2, 3, 7, 9, the king's eldest son and heir; (4) or if a man do levy war against
11, 13, 16, our lord the king in his realm, or be adherent to the king's enemies
19, 24, 27, in his realm, giving to them aid and comfort in the realm, or else-
32. where, and thereof be probably attainted of open deed by the people
Co. pla. 360. of their condition. (5) And if a man counterfeit the king's great or
Dyer, 296. privy seal, or his money; (6) and if a man bring false money into
3 Co. 2, 10. this realm, counterfeit to the money of *England*, as the money called
4 Co. 57. *Lusburgh*, or other like to the said money of *England*, knowing the
7 Co. 33. money to be false, to merchandise or make payment in deceit of our
Dyer, 128, said
332.
13 Co. 54.
Savill, 4.

said lord the king and his people; (7) and if a man flea the chancellor, treasurer, or the king's justices of the one bench or the other, justices in eyre, or justices of assize, and all other justices assigned to hear and determine, being in their places, doing their offices. (8) And it is to be understood, that in the cases above rehearsed, that ought to be judged treason which extends to our lord the king, and his royal majesty: (9) and of such treason the forfeiture or the escheats pertaineth to our lord, as well of the lands and tenements holden of other, as of himself. (10) And moreover there is another manner of treason, that is to say, when a servant slayeth his master, or a wife her husband, or when a man secular or religious slayeth his prelate, to whom he oweth faith and obedience; (11) and of such treason the escheats ought to pertain to every lord of his own fee. (12) And because that many other like cases of treason may happen in time to come, which a man cannot think nor declare at this present time, it is accorded, that if any other case, supposed treason, which is not above specified, doth happen before any justices, the justices shall tarry without any going to judgment of the treason, till the cause be shewed and declared before the king and his parliament, whether it ought to be judged treason or other felony. (13) And if percase any man of this realm ride armed covertly or secretly with men of arms against any other, to slay him, or rob him, or take him, or retain him till he hath made fine or ransom for to have his deliverance, it is not the mind of the king nor his council, that in such case it shall be judged treason, but shall be judged felony or trespass, according to the laws of the land of old time used, and according as the case requireth. (14) And if in such case, or other like, before this time any justices have judged treason, and for this cause the lands and tenements have comen into the king's hands as forfeit, the chief lords of the fee shall have the escheats of the tenements holden of them, whether that the same tenements be in the king's hands, or in others, by gift or in other manner; (15) saving always to our lord the king the year, and the waste, and the forfeitures of chattels which pertain to him in the cases above named; (16) and that the writs of *scire facias* be granted in such case against the land-tenants without other original, and without allowing any protection in the said suit; (17) and that of the lands which be in the king's hands, writs be granted to the sheriffs of the counties where the lands be, to deliver them out of the king's hands without delay."

The king shall have the forfeiture of all the offenders lands in high treason.
Fitz Coron. 7, 210.
Bro. Treason, 6, 8, 12, 15, 30.
12 Co. 16.
Cro. Car. 117, 332.
Petit treason.
New questions of treasons shall first be decided in parliament.

1 Ed. 6, c. 12.
1 Ma. st. 1, c. 1.
13 Car. 2, stat. 1, c. 1.

STAT. 1 *Mar. st.* 1, c. 1. [*A. D.* 1553] made, among other purposes, "for repealing and taking away certain treasons."

"Forasmuch as the state of every king, ruler and governor of any realm, dominion or commonalty, standeth and consisteth more assured by the love and favour of the subject toward their sovereign ruler and governor, than in the dread and fear of laws made with rigorous pains and extreme punishment, for not obeying of their sovereign ruler and governor: (2) and laws also justly made for the preservation of the commonweal without extreme

The state of a king standeth more assuredly by the love of his subjects than in fear of laws,

treme punishment or great penalty, are more often, for the most part, obeyed and kept, than laws and statutes made with great and extreme punishments; and in special such laws and statutes so made, whereby not only the ignorant and rude unlearned people, but also learned and expert people, minding honesty, are often and many times trapped and snared, yea many times for words only, without other fact or deed done, or perpetrated:

Señ. 2. “The queen’s most excellent majesty, calling to remembrance that many, as well honourable and noble persons, as other of good reputation within this her grace’s realm of *England*, have of late, (for words only, without other opinion, fact or deed) suffered shameful death, not accustomed to nobles, her highness therefore of her accustomed clemency and mercy, minding to avoid and put away the occasion and cause of like chances hereafter to ensue, trusting her loving subjects will, for her clemency to them shewed, love, serve, and obey her grace the more heartily and faithfully, than for dread or fear of pains of body, is contented and pleased that the severity of such like extreme, dangerous and painful laws, shall be abolished, annulled, and made frustrate and void.

No act or offence shall be treason, petty treason, or misprision, but such as be declared by the stat. of 25 Ed. 3, stat. 5, c. 12.

Señ. 3. “Be it therefore ordained and enacted by the queen our sovereign lady, with the assent of the lords spiritual and temporal, and of the commons in this present parliament assembled, and by the authority of the same, That from henceforth none act, deed or offence being by act of parliament or statute made treason, pety treason, or misprision of treason, by words, writing, cyphering, deeds, or otherwise whatsoever, shall be taken, had, deemed or adjudged to be high treason, pety treason, or misprision of treason, but only such as be declared and expressed to be treason, pety treason, or misprision of treason, in or by the act of parliament or statute made in the xxv. year of the reign of the most noble king of famous memory, king *Edward* the third, touching or concerning treason, or the declarations of treason, and none other; (2) nor that any pains of death, penalty or forfeiture in any wise ensue, or be to any offender or offenders, for the doing or committing any treason, pety treason, or misprision of treason, other than such as be in the said estatute made in the said xxv. year of the reign of the said king *Edward* the third, ordained and provided; any act or acts of parliament, statute or statutes, had or made at any time heretofore, or after the said xxv. year of the reign of the said late king *Edward* the third, or any other declaration or matter to the contrary in any wise notwithstanding.”

STAT. 1 Ed. 6, c. 12. [*A. D.* 1547, intituled] “An act for the repeal of certain statutes concerning treasons and felonies.”

No indictment or arraignment without two witnesses or confession.

Señ. 22. “Provided always, and be it enacted by the authority aforesaid, That no person or persons, after the first day of *February* next coming, shall be indicted, arraigned, condemned or convicted for any offence of treason, petit treason, misprision of treason, or for any words before specified to be spoken after the said first day of *February*, for which the

same

same offender, speaker, offenders or speakers, shall in any wise suffer any pains of death, imprisonment, loss, or forfeiture of his goods, chattels, lands or tenements; unless the same offender, speaker, offenders or speakers, be accused by two sufficient and lawful witnesses, or shall willingly without violence confess the same.”

By stat. 23 *Eliz. c. sett.* 2, It shall be treason to be reconciled or withdrawn to the Romish religion. See this act at large under **Hopery**.

By stat. 3 *L. Car.* 2, c. 2, Persons committed for high treason, shall be indicted the next term, or next assize.

STAT. 7 *Will.* 3, c. 3. [*A. D.* 1695, intituled] “An act for regulating of trials in cases of treason and misprision of treason.”

“Whereas nothing is more just and reasonable, than that persons prosecuted for high treason and misprision of treason, whereby the liberties, lives, honour, estates, blood, and posterity of the subjects, may be lost and destroyed, should be justly and equally tried, and that persons accused as offenders therein should not be debarred of all just and equal means for defence of their innocencies in such cases; in order thereunto, and for the better regulation of trials of persons prosecuted for high treason and misprision of such treason; be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, That from and after the five and twentieth day of *From 25 Mar. March*, in the year of our Lord one thousand six hundred ninety-six, all *1696, persons* and every person and persons whatsoever, that shall be accused and indicted for high treason, whereby any corruption of blood may or shall be made to any such offender or offenders, or to any the heir or heirs of any such offender or offenders, or for misprision of such treason, shall have a true copy of the whole indictment, but not the names of the witnesses, delivered unto them, or any of them, five days at the least before he or they shall be tried for the same, whereby to enable them, and any of them respectively, to advise with counsel thereupon, to plead and make their defence, his or their attorney or attorneys, agent or agents, or any of them, requiring the same, and paying the officer his reasonable fees for writing thereof, not exceeding five shillings for the copy of every such indictment; and that every such person so accused and indicted, arraigned and to make *their defence* or tried for any such treason, as aforesaid, or for misprision of such treason, from and after the said time, shall be received and admitted to make his *by counsel* and their full defence, by counsel learned in the law, and to make any *and witnesses* proof that he or they can produce by lawful witness or witnesses, who shall then be upon oath, for his and their just defence in that behalf; and in case *on oath.* any person or persons so accused or indicted shall desire counsel, the court *Court authorized to assign counsel.* before whom such person or persons shall be tried, or some judge of that court, shall and is hereby authorized and required immediately, upon his or their request, to assign to such person and persons such and so many counsel, not exceeding two, as the person or persons shall desire, to whom such

such counsel shall have free access at all seasonable hours; any law or usage to the contrary notwithstanding.

No person to be tried for high treason, but on the oath of 2 witnesses.

Señ. 2. “ And be it further enacted, That from and after the said five and twentieth day of *March*, in the year of our Lord one thousand six hundred ninety-six, no person or persons whatsoever shall be indicted, tried, or attainted, of high treason, whereby any corruption of blood may or shall be made to any such offender or offenders, or to any the heir or heirs of any such offender or offenders, or of misprision of such treason, but by and upon the oaths and testimony of two lawful witnesses, either both of them to the same overt act, or one of them to one, and the other of them to another overt act of the same treason; unless the party indicted, and arraigned, or tried, shall willingly, without violence, in open court, confess the same, or shall stand mute, or refuse to plead, or in cases of high treason shall peremptorily challenge above the number of thirty-five of the jury; any law, statute, or usage, to the contrary notwithstanding.

Persons indicted may be outlawed. But have benefit of this act.

Señ. 3. “ Provided always, That any person or persons, being indicted, as aforesaid, for any of the treasons, or misprisions of the treasons aforesaid, may be outlawed, and thereby attainted of or for any of the said offences of treason, or misprision of treason; and in cases of the high treasons aforesaid, where by the law, after such outlawry, the party outlawed may come in, and be tried, he shall, upon such trial, have the benefit of this act.

One witness to one act of treason, and another to another, not to be deemed two witnesses.

Señ. 4. “ And be it further enacted and declared by the authority aforesaid, That if two or more distinct treasons of divers heads or kinds shall be alledged in one bill of indictment, one witness produced to prove one of the said treasons, and another witness produced to prove another of the said treasons, shall not be deemed or taken to be two witnesses to the same treason, within the meaning of this act.

No person to be indicted for treason, unless within 3 years after offence.

Señ. 5. “ And to the intent that the terror and dread of such criminal accusations may in some reasonable time be removed, be it further enacted, That from and after the said five and twentieth day of *March*, in the year of our Lord one thousand six hundred ninety-six, no person or persons whatsoever shall be indicted, tried, or prosecuted, for any such treason as aforesaid, or for misprision of such treason, that shall be committed or done within the kingdom of *England*, dominion of *Wales*, or town of *Berwick upon Tweed*, after the said five and twentieth day of *March*, in the year of our Lord one thousand six hundred ninety-six, unless the same indictment be found by a grand jury within three years next after the treason or offence done or committed.

No prosecution, unless indicted within 3 years.

Señ. 6. “ And that no person or persons shall be prosecuted for any such treason, or misprision of such treason, committed or done, or to be committed or done, within the kingdom of *England*, dominion of *Wales*, or town of *Berwick upon Tweed*, before the said five and twentieth day of *March*, unless he or they shall be indicted thereof within three years after the said five and twentieth day of *March*; always provided and excepted, That if any person or persons whatsoever shall be guilty of designing, endeavouring, or attempting, any assassination on the body of the king, by person

Exception.

poison or otherwise, such person or persons may be prosecuted at any time, notwithstanding the aforesaid limitation:

Stat. 7. "And that all and every person and persons, who shall be accused, indicted, and tried, for such treason, as aforesaid, or for misprision of such treason, after the said five and twentieth day of *March*, in the year of our Lord one thousand six hundred ninety-six, shall have copies of the panel of the jurors who are to try them, duly returned by the sheriff, and delivered unto them, and every of them so accused and indicted respectively, two days at the least before he or they shall be tried for the same; and that all persons so accused and indicted for any such treason, as aforesaid, shall have the like process of the court where they shall be tried, to compel their witnesses to appear for them at any such trial or trials, as is usually granted to compel witnesses to appear against them.

Persons tried to have copies of the panel 2 days before trial.
Process of the court to compel witnesses to appear.

Stat. 8. "And be it further enacted, That no evidence shall be admitted or given of any overt act that is not expressly laid in the indictment against any person or persons whatsoever.

No evidence of acts not laid in the indictment.

Stat. 9. "Provided also, and be it enacted by the authority aforesaid, That no indictment for any of the offences aforesaid, nor any process or return thereupon, shall be quashed on the motion of the prisoner, or his counsel, for mis-writing, mis-spelling, false or improper Latin, unless exception concerning the same to be taken and made in the respective court where such trial shall be, by the prisoner or his counsel assigned, before any evidence given in open court upon such indictment; nor shall any such mis-writing, mis-spelling, false or improper Latin, after conviction on such indictment, be any cause to stay or arrest judgment thereupon: but nevertheless, any judgment given upon such indictment shall and may be liable to be reversed upon a writ of error, in the same manner, and no other, than as if this act had not been made.

No indictment to be quashed for miswriting, &c. unless exception be made before evidence given.
And not to stay judgment.

Stat. 10. "And whereas by the good laws of this kingdom, in cases of trials of commoners for their lives, a jury of twelve freeholders must all agree in one opinion before they can bring a verdict, either for acquittal or condemnation of the prisoner:

Jury of 12 freeholders.

Sect. 11. "And whereas upon the trials of peers or peeresses, a major vote is sufficient, either to acquit or condemn; be it further enacted by the authority aforesaid, That upon the trial of any peer or peeress, either for treason or misprision, all the peers who have a right to sit and vote in parliament shall be duly summoned, twenty days at least before every such trial, to appear at every such trial; and that every peer, so summoned and appearing at such trial, shall vote in the trial of such peer or peeress to be tried, every such peer first taking the oaths mentioned in an act of parliament made in the first year of the reign of king *William* and queen *Mary*, intituled, *An act for abrogating the oaths of supremacy and allegiance, and appointing other oaths*; and also every such peer subscribing and audibly repeating the declaration mentioned in *An act for the more effectual preserving the king's person and government, by disabling papists from sitting in either house of parliament*, and made in the thirtieth year of the reign of the late king *Charles* the second.

Peers to be summoned 20 days before trial; and shall take the oaths, &c.
1 W. & M. A. 1, c. 8.
30 Car. 2, Stat. 2, c. 1.

Act not to extend to any impeachment in parliament.

Sect. 12. "Provided always, That neither this act, nor any thing therein contained, shall any ways extend to, or be construed to extend to any impeachment or other proceedings in parliament, in any kind whatsoever.

Not to counterfeit the coin, &c.

Sect. 13. "Provided also, That this act, nor any thing therein contained, shall any ways extend to any indictment of high treason, nor to any proceedings thereupon, for counterfeiting his majesty's coin, his great seal, or privy seal, his sign manual or privy signet." [The benefit hereof is extended by 2. & 3 *Ann. c. 20, sect. 43*, to treasons within that act.]

By stat. 13 *Will. 3, c. 3*, If any person shall hold correspondence with the pretender, or any person employed by him, or shall remit any money to his use, he shall be guilty of high treason. And by stat. 17 *Geo. 2, c. 39*, This is extended to the pretender's son.

By stat. 6 *Ann. cap. 7, sect. 1*, If any person shall maliciously, advisedly, and directly, by writing or printing, maintain and affirm, that the pretended prince of *Wales*, who styles himself king of *Great Britain*, or king of *England* by the name of *James* the third, or king of *Scotland* by the name of *James* the eighth, hath any right or title to the crown, or that any other person hath a right or title to the same, otherwise than according to an act made in *England*, 1 *W. & M. st. 2, c. 2*, and one other act, 12 *Will. 3, c. 2*, and the acts made in *England* and *Scotland* for the union of the two kingdoms; or that the kings of this realm, with the authority of parliament, are not able to make laws and statutes to bind the crown, and the descent thereof; such persons shall be guilty of high treason.

Sect. 3. Provided that no person shall be prosecuted by virtue of this act for any words spoken, unless the information of such words be given upon oath to a justice of peace within three days after such words spoken, and the prosecution of such offence be within three months after such information; and no person shall be convicted for such words spoken but by the oaths of two witnesses.

By stat. 7 *Ann. cap. 21, sect. 10*, After the decease of the person who pretended to be prince of *Wales* during the life of the late king *James*, &c. no attainder for treason shall extend to the disheriting of an heir, nor to prejudice of any person, other than the offender during his life.

Sect. 11. "After the decease of the person who pretended, &c. when any person is indicted for high treason, or misprison of treason, a list of the witnesses that shall be produced on the trial for proving the said indictment and of the jury, mentioning the names, profession, and place of abode of the witnesses and jurors, shall be given at the same time that the copy of the indictment is delivered to the party indicted; and copies of all indictments for the offences aforesaid, with such lists, shall be delivered to the party indicted ten days before the trial, and in presence of two witnesses."

Treasurer.

BY stat. 11 Geo. 2, c. 20, Treasurer's election shall be certified into the king's-bench. See this act at large under title **Baol and Baoler**.

By stat. 12 Geo. 2, c. 29, Treasurer shall be appointed by justices of peace at their quarter-session. See this act under title **County-Rate**.

Turnips.

STAT. 23 Geo. 2, c. 26. [A. D. 1750] made, among other purposes, "to prevent the stealing or destroying of turnips."

Sect. 13. "And whereas great quantities of turnips have of late years been stolen and taken away by idle and ill-disposed persons, from the grounds of several farmers, and others growing turnips, to the great loss and damage of the owners of the said turnips; for remedy whereof, be it further enacted by the authority aforesaid, That if any person or persons shall, from and after the twenty-fourth day of *June*, one thousand seven hundred and fifty, steal and take away, or maliciously pull up and destroy any turnips, growing or being in any lands or grounds belonging to any person or persons, and shall be thereof convicted before any one or more justice or justices of the peace for the county, town, or place, where the said offence shall be committed, either by confession of the party offending, or by the oath of one or more person or persons (and which oath such justice or justices is and are hereby authorized and impowered to administer) every person so offending, and being convicted of such offence, in manner herein before-mentioned, shall, for the first offence, give and pay to the owner or owners of the turnips so stolen, pulled up, or destroyed, such satisfaction for his or their damage thereby sustained, and within such time, as the said justice or justices shall appoint; and shall over and above pay down upon upon such conviction, unto the overseers of the poor of the parish where the offence or offences was or were committed, for the use of the said poor, such sum of money not exceeding ten shillings, as to the said justice or justices shall seem meet; and if any such offender or offenders shall not make such recompence or satisfaction to the said owner or

Vagrants.

owners, and also pay such sum to the use of the poor, in manner and form aforesaid, then the said justice or justices shall and may commit the said offender or offenders to the house of correction, for any space not exceeding one month, or shall and may order such offender or offenders to be whipped by the constable, as to the said justice or justices shall seem meet; and if any such person or persons shall again commit the like offence, and be thereof convicted as aforesaid, then he, she, or they, so offending the second time, and being thereof convicted as aforesaid, shall be committed to the house of correction for three months.

Limitation of
the prosecu-
tion.

Stat. 14. "Provided always, That no person or persons shall be prosecuted for any such offence of stealing, pulling up, or destroying of turnips, unless such prosecution be begun within thirty days after the offence committed."

Vagrants.

ST A T. 17 *Geo. 2, c. 5, [A. D. 1744, intituled,]* "An act to amend and make more effectual the laws relating to rogues, vagabonds, and other idle and disorderly persons, and to houses of correction."

Particular of
fences, and
their punish-
ments.

"Whereas the number of rogues, vagabonds, beggars, and other idle and disorderly persons, daily increases, to the great scandal, loss, and annoyance of the kingdom; for remedy thereof, be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That all persons who threaten to run away and leave their wives or children to the parish; and all persons who shall unlawfully return to such parish or place from whence they have been legally removed by order of two justices of the peace, without bringing a certificate from the parish or place whereunto they belong; and also all persons who, not having wherewith to maintain themselves, live idle without employment, and refuse to work for the usual and common wages given to other labourers in the like work, in the parishes or places where they then are; and also all persons going about from door to door, or placing themselves in streets, highways, or passages, to beg or gather alms in the parishes or places where they dwell, shall be deemed idle and disorderly persons; and it shall and may be lawful for any justice of the peace to commit such offenders (being thereof convicted before him, by his own view, or by their own confession, or by the oath of one or more credible witness or witnesses) to the house of correction, there to

be kept to hard labour for any time not exceeding one month: And it shall and may be lawful for any person to apprehend, and carry before a justice of the peace, any such persons going about from door to door, or placing themselves in streets, highways, or passages, to beg or gather alms in the parishes or places where they dwell; and if they shall resist, or escape from the person apprehending them, they shall be subject to the same punishment as rogues and vagabonds are made liable to by this act: And it shall and may be lawful for the said justice, by warrant under his hand and seal, to order any overseer of the poor of the parish or place where such offender shall be apprehended, to pay the sum of five shillings to any person or persons in any such parish or place so apprehending them, for every offender so apprehended; which sum shall be allowed to such overseer in his account, he producing the justice's order, and a receipt under the hand of the person or persons to whom such sum was paid: But if such overseer shall neglect or refuse to pay the said sum, the said justice, on oath thereof made, may, by warrant under his hand and seal, order the same to be levied by distress and sale of the goods of such overseer; and the overplus (if any) after the charges of such distress satisfied, shall be returned to such overseer, who in such case shall not be allowed the sum so levied in his account.

Offence of a high nature.

Five shillings reward for apprehending offenders.

Penalty on overseer not paying the reward.

Sec. 2. "And be it further enacted by the authority aforesaid, That all persons going about as patent-gatherers, or gatherers of alms, under pretences of loss by fire, or other casualty; or going about as collectors for prisons, gaols, or hospitals; all fencers and bearwards; all common players of interludes; and all persons who shall for hire, gain, or reward, act, represent, or perform, or cause to be acted, represented, or performed, any interlude, tragedy, comedy, opera, play, farce, or other entertainment of the stage, or any part or parts therein, not being authorized by law; all minstrels, jugglers; all persons pretending to be gypsies, or wandering in the habit or form of Egyptians, or pretending to have skill in physiognomy, palmistry, or like crafty science, or pretending to tell fortunes, or using any subtil craft to deceive and impose on any of his majesty's subjects, or playing or betting at any unlawful games or plays; and all persons who run away and leave their wives or children, whereby they become chargeable to any parish or place; and all petty chapmen and pedlars wandering abroad, not being duly licensed, or otherwise authorized by law; and all persons wandering abroad, and lodging in alehouses, barns, outhouses, or in the open air, not giving a good account of themselves; and all persons wandering abroad and begging, pretending to be soldiers, mariners, seafaring men, or pretending to go to work in harvest; and all other persons wandering abroad and begging, shall be deemed rogues and vagabonds within the true intent and meaning of this act."

Other offences, and their punishments.

Sec. 3. "Provided always, That this act, or any thing herein contained, shall not extend, or be construed to extend, to soldiers wanting subsistence, having lawful certificates from their officers or the secretary at war, or to mariners or seafaring men licensed by some testimonial or writing

Proviso.

writing under the hand and seal of some justice of the peace, setting down the time and place of their landing or discharge, and the place to which such soldiers or mariners are to pass, and the names of the chief towns or places through which they are to pass, and limiting the time of such their passage, while they continue in the direct way to the place to which they are to pass, and during the time so limited; or to any person or persons going abroad to work at any lawful work in the time of harvest, so as he, she, or they carry with him, her, or them a certificate in writing, signed by the minister and one of the churchwardens or chapelwardens, or one of the overseers of the poor for the time being, of the parish, chapelry, or place where they shall respectively inhabit, declaring that he, she, or they hath or have a dwelling-house, or place there, in which he, she, or they inhabit.

Incorrigible
rogues.

13G. 1, c. 23.

Sect. 4. " And be it further enacted by the authority aforesaid, That all end-gatherers offending against an act made in the thirteenth year of his late majesty king George the first, intituled, *An act for the better regulation of the woollen manufacture, and for preventing disputes among the persons concerned therein; and for limiting a time for prosecuting for the forfeiture appointed by an act of the twelfth year of his majesty's reign, in case of payment of the workmen's wages in any other manner than in money, being convicted of such offence;* and all persons apprehended as rogues and vagabonds, and escaped from the persons apprehending them, or refusing to go before a justice or justices of the peace, or to be examined upon oath before such justice or justices, or refusing to be conveyed by any such pass as is herein after directed, or knowingly giving a false account of themselves on such examination, after warning given them of their punishment; and all rogues or vagabonds who shall break or escape out of any house of correction, before the expiration of the term for which they were committed or ordered to be confined by virtue of this act; and all persons who after having been punished as rogues and vagabonds, and discharged, shall again commit any of the said offences, shall be deemed incorrigible rogues within the true intent and meaning of this act.

Any person
may apprehend
offenders.

Penalty on
officers ne-
glecting their
duty.

Sect. 5. " And be it further enacted by the authority aforesaid, That if any persons shall be found offending against this act, it shall and may be lawful for any person whatsoever to apprehend the person so offending, and to convey, or cause to be conveyed to some justice of the peace, the persons so apprehended, to be proceeded against in such manner as is herein after directed: And in case any constable, or other such officer, shall refuse or neglect to use his best endeavours to apprehend or convey to some justice of the peace any such offender; it shall be deemed a neglect of duty in such constable or officer, and he shall be punished in such manner as is herein after directed: And in case any other person, being charged by any justice of the peace so to do, shall refuse or neglect to use his best endeavours to apprehend and deliver to the constable, or such other officer, or to carry such offender before some justice of the peace, where no constable or other such officer can be found; such person so offending, as aforesaid, being thereof convicted upon view, or by the oath of one or

more

more credible witness or witnesses, before one or more justice or justices of the peace, shall forfeit the sum of ten shillings, to the use of the poor of the parish or place wherein such offence shall be committed; to be levied by distress and sale of the offender's goods, by warrant from any justice or justices; and the overplus (if any) after the charges of such distress satisfied, shall be returned to such offender: And in case any person not being a constable, or such other officer, shall apprehend any such rogue or vagabond, and shall deliver him or her to a constable, or other such officer, or shall convey, or cause him or her to be conveyed to some justice or justices of the peace, according to the directions of this act; or if any constable, or other such officer, shall so apprehend and convey such rogue or vagabond; it shall and may be lawful for such justice or justices to reward any such constable or other person, by making an order under hand and seal upon the high or chief constable, to pay the sum of ten shillings to the person so apprehending him or her, within one week after demand, and producing such order, and upon his giving a receipt for the same; and the same shall be allowed or paid by the treasurer of the county, riding, division, or liberty, to such high or chief constable on his passing his accounts, and delivering such order and receipt, and also his own receipt for the same, to such treasurer; and the said justices at the general or quarter sessions, shall allow the same to such treasurer in his accounts, upon his producing and delivering up the vouchers aforesaid: And in cities, boroughs, towns-corporate, and other places where there are no high or chief constables, such petty constables and other officers shall pay or retain such reward, as aforesaid, and be allowed what they shall so pay or retain by virtue of this act in their respective accounts, upon their producing and delivering up the like vouchers: and in case any high or chief constable, or where there is no high or chief constable, such petty constable, or other officer, shall refuse or neglect to pay such reward on demand, it shall and may be lawful for such justice or justices of the peace, by warrant under hand and seal, to levy the sum of twenty shillings, by distress and sale of the goods of such officer, and thereout to allow to the person intitled thereto, the said reward of ten shillings, and such other recompence for his trouble, loss of time, and expences, as the said justice or justices shall think fit; and the overplus (if any) shall be returned to such officer upon demand.

Reward for taking up rogues, vagabonds, &c.

Penalty on not paying the reward.

Sett. 6. "And be it further enacted by the authority aforesaid, That the justices of the peace for every county, riding, city, borough, town-corporate, division, or liberty, or any two of them, shall, four times in the year at least; or oftener (if need be) meet in their respective divisions, and by their warrant, command the constables or other peace officers of every hundred, parish, town, and hamlet, in their several divisions, who shall be assisted with sufficient men of the same places, to make a general privy search in one night, throughout their several and respective limits, for the finding and apprehending of rogues and vagabonds; and every justice of the peace shall also, on receiving information that rogues and vagabonds are in any place within his jurisdiction, issue his warrant to the

General privy searches to be made.

the constable or other officer of such place, to search for and apprehend such rogues and vagabonds; and such rogues and vagabonds as they shall find and apprehend upon such searches, they shall cause to be brought before any justice or justices of the peace of the same county, riding, city, borough, town-corporate, division, or liberty.

Justices to
punish vaga-
bonds, &c.
taken up at
privy
searches.

Different
sorts of vaga-
bonds, how
to be passed.

Sec. 7. " And be it further enacted by the authority aforesaid, That where any rogues or vagabonds, apprehended by any constable, or such other officer or person as aforesaid, or upon such search as aforesaid, shall be brought before any justice or justices of the peace, it shall and may be lawful for such justice or justices, and he or they are hereby required to inform himself or themselves, by the examination upon oath of the person or persons apprehended, or of any other person, of the condition and circumstances of the person or persons so apprehended, and of the parish or place, where he, she, or they were last legally settled; the substance of which examination or examinations shall be put into writing, and be subscribed or signed by the person or persons so examined; and the said justice or justices shall likewise sign the same, and transmit it to the next general or quarter sessions of the peace to be holden for the same county, riding, city, borough, town-corporate, division, or liberty, there to be filed and kept on record; and such justice or justices of the peace, shall and are hereby required to order all such persons so apprehended, to be publickly whipt by the constable, petty constable, or tythingman, or some other person to be appointed by such constable, petty constable, or tythingman, of such parish or place where such persons were apprehended; or to order such persons to be sent to the house of correction, there to remain until the next general or quarter sessions, or for any less time, as such justice or justices shall think proper; and after such whipping or confinement, such justice or justices may, and are hereby empowered, if they think convenient, by a pass under hand and seal, in the manner and form hereafter directed, to cause such persons to be conveyed to the place of their last legal settlement; but if it cannot be found, then to the place of their birth; or if such persons, or any of them, be under the age of fourteen years, and have any father or mother living, then to the place of the abode of such father or mother, there to be delivered to some church-warden, chapel-warden, or overseer of the poor of such parish, town, or place; which pass shall be in the form or to the effect following:

To the constable of _____ in the county of _____ (*or to the tythingman, or other officer, as the case shall be, or if the offender is committed to the house of correction, then to the governor or master thereof*)
And also to all constables and other officers whom it may concern, to receive and convey; and to the church-wardens, chapel-wardens, or overseers of the poor of the parish, town, or place (*as the case shall be*)
of _____ in the county of _____ or either of them, to receive and obey.

Form of the
pass.

" Whereas _____ was (*or were*) apprehended in the parish of _____
(*or in the town of _____ or other place, describing it*)

as

as a rogue and vagabond, *or* as rogues and vagabonds, *videlicet*, wandering and begging there (*or as the case shall be*) and upon examination of the said taken before upon oath (which examination is hereunto annexed) it doth appear, that his, *her*, *or their* last legal settlement is at in this county (or, in the county of) *or*, that the said was (or were) born in the parish of in this county (or, in the county of) and hath (*or have*) not since obtained any legal settlement; *or* that the said is (*or are*) under the age of fourteen years, and hath (*or have*) a father or mother living or abiding in the parish (*or town*) of (*or other place, describing it.*) These are therefore to require you the said constable, or other officer, (*or governor or master of the house of correction, as the case shall be*) to convey the said in the next direct way to the said parish (*or town*) of (*or other place*) within the said county, and there to deliver him (*her or them*) to some church-warden, chapel-warden, or overseer of the poor of the same parish (*town or place*) to be there provided for according to law (*or in case the said parish, town, or place, to which such person or persons is or are to be sent, lies in some other county, riding, division, corporation, or franchise having separate general or quarter sessions of the peace, then the form shall be as followeth, videlicet, To* convey the said to the parish (or town) of that being the first parish (*or town*) in the next precinct through which he (*she or they*) ought to pass in the direct way to the said parish (*or town*) of to which he (*she or they*) is (*or are*) to be sent, and to deliver him (*her or them*) to the constable, or other officer of such first town (*or parish*) in such next precinct, together with this pass, and the duplicate of the examination of the said taking his receipt for the same; and the said is (or are) to be thence conveyed on in like manner to the said parish (*or town*) of there to be delivered to some church-warden, chapel-warden, or overseer of the poor of the same parish (*town or place*) to be there provided for according to law; and you the said church-wardens, chapel-wardens, and overseers of the poor, are hereby required to receive the said person (*or persons*) and provide for him (*her or them*) as aforesaid."

Sec. 8. "And be it further enacted by the authority aforesaid, That Duplicate of such justice or justices shall make or cause to be made a duplicate of such the pass and examination, and sign the same; and shall afterwards transmit the duplicate of the said pass annexed to the examination, to the next to be filed at the next general or quarter sessions of the peace, there to be filed and kept on record; and shall annex the duplicate of the examination to the pass, and the next general or quarter sessions. and send it with the same; and the said pass, examination, and duplicates thereof, shall and may be read in any court of record in *England, Wales*, or the town of *Berwick upon Tweed*, as evidence.

Sec. 9. "And be it further enacted by the authority aforesaid, That Power of justices over where any offender against this act shall be committed, as aforesaid, to vagabonds and incorrigible rogues. the house of correction, there to remain until the next general or quarter sessions; ble rogues.

sessions; and the justices at such sessions shall, on examination of the circumstances of the case, adjudge such person a rogue or vagabond, or an incorrigible rogue; they may, if they think convenient, order such rogue or vagabond to be detained and kept in the said house of correction to hard labour, for any further time not exceeding two years, nor less than six months from the time of making such order of sessions; and during the time of such person's confinement, to be corrected by whipping, in such manner, and at such times and places within their jurisdictions, as according to the nature of such person's offence, they in their discretion shall think fit; and such person may (if the justices at the said sessions shall think convenient) afterwards be sent away by such pass, *mutatis mutandis*, as aforesaid; and if such person, being a male, is above the age of twelve years, the justices at their sessions may and are hereby empowered, at any time before he is discharged from the house of correction, to send him to be employed in his majesty's service, either by sea or land, if they shall judge proper; and in case any such incorrigible rogue, so ordered by the said general or quarter sessions to be detained and kept in the said house of correction, shall, before the expiration of the time for which he or she shall be so ordered to be there detained and kept, break out or make his or her escape from the said house of correction, or shall offend again in like manner; in every such case, every such person shall be deemed and taken to be guilty of felony, and being legally convicted thereof, shall and may be transported for any time not exceeding seven years, in the same manner as by the laws now in being other felons may be transported.

Justices to regulate the passes, by giving the officers certificates.

SECT. 10. "And to prevent unnecessary expence in the passing or conveying of rogues, vagabonds, and incorrigible rogues, be it enacted by the authority aforesaid, That the justice or justices of the peace, who shall make the pass, shall at the same time, with the said pass, cause likewise to be delivered to the constable, or other officer appointed to convey them, a note or certificate, ascertaining how they are to be conveyed, by horse, cart, or on foot, and what allowance such constable or other officer is to have for conveying them (according to the rates or allowances appointed by the general or quarter sessions of the peace, as is herein after directed) in the form, or to the effect following, *videlicet* :

Form of the certificate.

"Whereas by a pass (*reciting the substance or effect of the said pass*) I, (*or we*) do hereby order and direct the said person (*or persons*) to be conveyed on foot (*or in a cart, or by horse, et cetera*) to the said town (*or parish*) of _____ in _____ (*or other place, describing it*) in the way to such parish (*town or place, as the case shall be*) in _____ days time; for which the said constable (*et cetera*) is to be allowed the sum of _____ and no more."

Given under my hand (or our hands) this day, et cetera.

SECT.

Señ. 11. " And be it further enacted by the authority aforesaid, That the constable, or other officer, who shall receive such pass and certificate, shall, and is hereby required to convey, or cause to be conveyed, the person or persons named in such pass, in such manner, and in such time, as by the same pass shall be directed, the next direct way to the place where he, she, or they are ordered to be sent, if such place be in the same county, riding, division, corporation, or franchise, where the said person or persons were apprehended; but if the place to which the person or persons so apprehended is or are to be sent, lies in some other county, riding, division, corporation, or franchise, he shall deliver the said person or persons to the constable or such other officer of the first town, parish or place, in the next county, riding, division, corporation or franchise, in the direct way to the place to which such person or persons is or are to be conveyed, together with the said pass and duplicate of examination, taking his receipt for the same; and such constable or other officer, shall, without delay, apply to some justice of the peace in the same county, riding, division, corporation or franchise, who shall make the like certificate as before (*mutatis mutandis*) and deliver it to the said constable or other officer, who shall and is hereby required with all speed to convey the person or persons unto the first parish, town or place, in the next county, riding, division, corporation or franchise, in the direct way to the place to which such person or persons is or are to be conveyed; and so in like manner from one county, riding, division, corporation or franchise, to another, till they come to the place to which such person or persons is or are sent; and the constable or other officer, who shall deliver such person or persons to the churchwarden or other person ordered to receive them by such pass, shall at the same time deliver the said pass, with the duplicate of examination, taking their receipt for the same; and if the churchwarden or other person, who shall receive any person so sent, shall think the examination to be false, he is hereby impowered to carry the person so sent, before some justice of the peace, who, if he see cause, may commit such person to the house of correction, till the next quarter-fessions, and the justices there, if they see cause, may deal with such person as an incorrigible rogue; but the person so sent shall not be removed from the place to which sent, but by order of two justices, in the same manner as other poor persons are removed to the place of their settlement.

Señ. 12. " *And whereas it often happens that persons commit acts of vagrancy when they are in circumstances sufficient to pay for their journey home;* be it therefore enacted by the authority aforesaid, That it shall and may be lawful for any justice of the peace, before whom any vagrants shall be carried, to order such vagrants to be searched, and their bundles to be inspected by the constable, tythingman, churchwarden or overseer of the poor, in the presence of the said justice; and if it shall appear, that any such vagrant shall be found to have sufficient wherewithal to pay for their passage, either in the whole or in part, to the parish to which they belong, then the said justice or justices shall order so much of the money to be paid, or other effects found with or upon such vagrants, to be sold,

The duty of officers with such pass and certificate. Amended by 26 Geo. 2, c. 34.

Persons shall pay for their own passage, if they are found able.

and employed for and towards the expence of taking up and passing such vagrants as aforesaid, returning the overplus (if any be) after deducting the charges of such sale, to such vagrants.

Regulations
for passing va-
grants into
Scotland.

Secl. 13. " And be it further enacted by the authority aforesaid, That the constable or other officer of any parish or place, within the counties of *Cumberland, Northumberland, Durham, or town of Berwick upon Tweed,* shall, and they are hereby authorized and required, upon any person or persons being delivered to them by a pass and examination, who shall have been apprehended within the said counties or town, or brought to them according to the direction of this act, whose place of legal settlement is in that part of *Great Britain* called *Scotland*, to deliver the said examination to the clerk of the peace for such respective county, to be kept among the records of the sessions of that county, and to convey or cause to be conveyed, such person or persons, with the said pass, into the next adjoining shire, stewardry or place in that part of the united kingdom; and to deliver him, her or them to some constable or other officer of the next parish, district or place, within the said shire, stewardry or place, taking his receipt for him, her or them; and such officer is hereby required to receive such person or persons, and give such receipt, and to dispose of him, her or them according to law; and in case any such vagrant, after being so sent and conveyed into that part of *Great Britain* called *Scotland*, shall, after being so sent as aforesaid, be found wandering, begging or misbehaving him or herself within that part of *Great Britain* called *England*, contrary to the true intent and meaning of this act; every such person so offending, shall be deemed an incorrigible rogue, and be punished as incorrigible rogues are to be punished by this act.

Regulations
for passing va-
grants into
Ireland, &c.

Secl. 14. " And whereas divers vagrants have been conveyed from county to county, in order to be sent to places in *Ireland*, the isles of *Man, Jersey, Guernsey, or Scilly* (their last legal settlement) but for want of authority to compel masters of ships and vessels to take them on board, in order to be carried thither at reasonable rates, they may be very chargeable to the maritime counties, towns and places in *England* and *Wales*, where they may lie for such exportation: be it therefore enacted by the authority aforesaid, That all and every master and masters of any ship or vessel or packet boat bound for *Ireland*, the isles of *Man, Jersey, Guernsey, or Scilly*, shall, and they, and each of them is and are hereby required, upon warrant to him or them directed under the hand and seal of a justice of the peace of the county, town or place where such ship, vessel or packet boat shall lie, to take on board the same such vagrant and vagrants as shall be named and expressed in the said warrant, and convey him, her or them to such place in *Ireland*, the isles of *Man, Jersey, Guernsey, or Scilly*, as such ship, vessel or packet boat shall be bound to, or shall arrive at; and for the charges thereof such master shall take, and the constable or person who serves him with the said warrant shall pay him such rate *per head*, as the justices of the peace at their quarter-sessions shall from time to time appoint for every such vagrant so brought and delivered to him; and such master shall and is hereby required, on the

back of the said warrant, to sign a receipt for the money so paid, and also for the vagrant or vagrants so brought and delivered; which warrant so endorsed shall then be produced to the justice of the peace who signed and sealed the same, and upon his allowance thereof, under his hand, the money so paid shall be repaid by the county, in such manner as by this act the money to be paid for conveying vagrants from county to county is directed; and every master of such ship, vessel or packet boat, neglecting or refusing to receive on board, or to transport such vagrant or vagrants, or to indorse and sign such receipt as aforesaid, shall forfeit five pounds to the use of the poor of the parish or place where the offence shall be committed; to be levied by distress and sale of the said ship, or any goods within the same, by warrant under the hand and seal of any justice of the peace for the same county, city or town corporate, returning the overplus (if any be) upon demand, after the said penalty and charges of levying the same are satisfied.

Penalty on masters of ships refusing to take vagrants on board.

Sec. 15. " Provided always, and it is hereby declared, That no master of any such packet boat, ship or vessel shall be compelled to take on board more than one vagrant for every twenty tons burthen of any such boat, ship or vessel.

Masters not obliged to take on board more than one vagrant for every 20 tons burthen.

Sect. 16. " And be it further enacted by the authority aforesaid, That the justices of the peace of any county, riding, city, borough, town corporate, division or liberty, shall and may at the general or quarter-sessions of the peace from time to time, limit, appoint, and direct what rates and allowances *per* mile, or otherwise, shall be made for the passing, conveying or maintaining of rogues, vagabonds or incorrigible rogues, to be passed or conveyed as aforesaid; and may likewise make such other orders, rules and directions, for the more regular proceeding or acting therein, within their respective limits and jurisdictions, as they, in their discretion shall think proper; which rates, allowances, orders, rules and directions shall from time to time be observed and submitted to by all justices of the peace, constables, officers and other persons within the same limits and jurisdictions respectively.

Justices to limit the rates *per* mile for passing vagrants, &c.

Sec. 17. " And be it further enacted, That in case any petty constable, or other such officer of any parish or place, shall bring to any high or chief constable any such certificate as aforesaid, as shall be given him by any justice or justices of the peace for the proper county or place, ascertaining how and for what rates or allowances he shall be required to convey any rogues, vagabonds or incorrigible rogues as aforesaid, together with a receipt or note from any constable or other officer or person to whom the person or persons so to be conveyed was or were delivered, the said high or chief constable shall and may pay unto such petty constable or other officer, the rates or allowances ascertained in and by such certificate, and no more, taking from such petty constable or other officer such certificate, and his receipt for the same; and the said high or chief constable shall be allowed the same by the treasurer of the county, riding, liberty, division, corporation, or franchise, on his passing his accounts, upon his producing and delivering up such certificate and receipt, and giving his

The high constable to pay the rates to petty constables, &c. for passing vagrants.

Flagrants.

Penalty on the high constable's refusing to pay, as directed by the justices warrant.

own receipt for the same to such treasurer; and the justices at the general or quarter-sessions shall allow the same to such treasurer in his account, upon his producing and delivering up the vouchers aforesaid: and in case any high or chief constable shall refuse or neglect to pay the said petty constable, or other officer or person, the rates or allowances ascertained in and by such certificate and receipt, on demand; it shall and may be lawful for any justice or justices of the peace, by warrant under hand and seal to levy double the sum ascertained by such certificate, by distress and sale of the goods of such high or chief constable, and thereout to allow the said petty constable, or other officer or person, the sum ascertained in and by such certificate and receipt, and such other recompence for his trouble, loss of time and expences, as the said justice or justices shall think fit; and the overplus (if any) shall be returned to such high or chief constable upon demand; and in cities, towns corporate and other places, where there is no high or chief constable, such petty constables or other officers shall be allowed what they shall so pay pursuant to the directions of such certificate, in their respective accounts, upon their producing and delivering up such vouchers; or in case any governor or master of a house of correction shall deliver such certificate and receipt to any treasurer as aforesaid, such treasurer shall pay the rates therein ascertained to such governor or master of a house of correction, taking his receipt for the same, which shall be allowed to such treasurer in his accounts, on his producing and delivering up such vouchers.

Penalty on counterfeiting or altering certificates, receipts, or notes.

Penalty on the officer not passing according to order; and on the officer's not receiving the pass.

Manner of levying the penalty.

§ 7. 18. " Provided always, and be it further enacted by the authority aforesaid, That in case any such petty constable, or other officer, or governor, or master of any house of correction, shall counterfeit any such certificate, receipt or note, or make, or knowingly permit to be made, any alteration in any such certificate, receipt or note, he shall forfeit the sum of fifty pounds; and in case he shall not convey, or cause to be conveyed, the persons to the place where they ought to be conveyed, or shall not deliver them to the proper person; or if any constable, or other officer or person, shall refuse to receive any such persons sent to them, or to give a receipt or note as before directed; that in any of the said cases, the constable or other officer or person, shall forfeit the sum of twenty pounds; which said respective forfeitures shall be levied by distress and sale of the offender's goods, by warrant or order of the justices of the peace, where such offence shall be committed, at their general or quarter-sessions; one moiety to be paid to the person or persons who shall first make information against any such offender, and the other moiety to be paid to the treasurer of the county or place, to be applied by him as part of the public stock: and the overplus (if any) after such forfeitures levied, and the charges of distress satisfied, shall be returned to such constable or other officer or person upon demand.

Vagabonds, &c. to be set to work.

§ 7. 19. " And be it enacted by the authority aforesaid, That the parish or place to which any rogue, vagabond or incorrigible rogue, shall be conveyed by pass as aforesaid, shall take care to employ in work, or place in some workhouse or alms-house, the person or persons so conveyed to them,

them, until he, she or they shall betake themselves to some service or other employment; and in case any such person or persons shall refuse to work; or shall not betake themselves to some service or employment, the overseers of the poor of the same parish or place, or the major part of them, may cause such person or persons to be carried before some justice of the peace, in order to be sent to the house of correction, there to be kept to hard labour.

Sett. 22. " And be it further enacted by the authority aforesaid, That in case any constable or other officer, or governor or master of any house of correction, shall be defective, remiss, or negligent in his duty, in the execution of this act, in any case for which no punishment is herein before particularly provided; or in case any person or persons shall disturb or hinder the execution of this act, or shall rescue any person apprehended or passing from place to place by virtue thereof, or shall be advising, aiding or assisting to his or her escape, and shall be thereof convicted upon the oath of one or credible witness or witnesses, before one or more justice or justices of the peace, where such offence shall be committed (which oath the said justice or justices are hereby empowered to administer) the person or persons so offending, for every such offence shall forfeit any sum not exceeding five pounds, nor less than ten shillings, to the use of the poor of the parish or place where such offence shall be committed; to be levied by distress and sale of the offenders goods, by warrant from such justice or justices, returning the overplus, (if any be) upon demand, after the said forfeiture and charges of making and keeping the said distress shall be paid and satisfied; and if sufficient distress cannot be found, it shall and may be lawful to and for one or more such justice or justices to commit the persons so offending to the house of correction, there to be kept to hard labour for any time not exceeding two months.

Penalty on officers not doing their duty;

and on persons hindering the execution of this act, or rescuing a prisoner.

To be levied by distress and sale, &c.

Sett. 23. " And whereas persons herein before described to be rogues, vagabonds or incorrigible rogues, are much encouraged in wandering about, by the reception they too often meet with in villages and places where they are permitted to lodge in houses, barns or other outhouses or buildings, by means whereof, and their falling sick there, great expences are sometimes brought upon parishes: for remedy thereof, be it enacted by the authority aforesaid, That if any person shall knowingly permit or suffer any such rogue, vagabond or incorrigible rogue, to lodge or take shelter in his or her house, barn or other outhouse or buildings, and shall not apprehend and carry such rogue, vagabond or incorrigible rogue before some justice of the peace, or give notice to some constable, or other such officer so to do; such person being thereof lawfully convicted, either on confession, or upon oath of one or more credible witness or witnesses, before one or more of his majesty's justices of the peace where such offence shall be committed, shall forfeit any sum not exceeding forty shillings, nor less than ten shillings; one moiety thereof to the informer, and the other moiety to the use of the poor of the parish or place where such offence shall be committed; to be levied by distress and sale of the goods and chattels of such offender, by warrant from such justice or justices, re-

Penalty for sheltering vagabonds.

turning.

turning the overplus (if any) upon demand, after such forfeiture and charges of such distress shall be satisfied; and if any charge shall be brought upon any parish or place, by means of any such offence, the same shall be answered to the said parish or place by such offender, and be levied by distress and sale of his or their goods and chattels as aforesaid: and if sufficient distress cannot be found, such offender shall be committed to the house of correction by the justice or justices, for any time not exceeding one month.

Beggars with children how to be ordered.

Sett. 24. "And whereas persons are often found offending against this act, having children with them; whom they bring up in a dissolute course of life, destructive to such children, and prejudicial to the kingdom, in which a race of disorderly persons will increase, if such children are suffered to remain with such offenders; be it therefore enacted by the authority aforesaid, That if any such child, above the age of seven years, shall be committed to the house of correction as aforesaid, it shall and may be lawful for the justices at the quarter-sessions, if they see convenient, at any time before such child be discharged, to order such child to be placed out in such manner as they shall think fit, as a servant or apprentice to any person within their respective jurisdictions, who is willing to take such child, to serve such person till such child shall arrive at the age of twenty-one years, or for any less time, as to the said justices shall seem meet: and if any offender, who was found with such child as aforesaid, shall be again found with the same child (which was so placed out as aforesaid) offending against this act, such offender shall be deemed an incorrigible rogue.

How to order women delivered of children in the street.

Sett. 25. "And whereas women wandering and begging, are often delivered of children in parishes and places to which they do not belong, whereby they become chargeable to the same; be it therefore enacted by the authority aforesaid, That where any such woman shall be so delivered, and become chargeable, it shall and may be lawful for the churchwardens or overseers of the poor of such parish or place, to detain such woman in their custody, until they can safely convey her to some justice of the peace, who shall examine her, and commit her to the house of correction, until the next general or quarter-sessions, who may (if they see convenient) order her to be publicly whipt, and detained in the house of correction, for any further time, not exceeding six months; and upon application by the churchwardens or overseers of the place, where she was so delivered, the justices at such sessions shall order the treasurer of the county or district to pay them such a sum of money as shall be adjudged a reasonable satisfaction for the charges such place has been put to on such woman's account; and if such woman shall be detained and conveyed to a justice as aforesaid, the child of which she is delivered, if a bastard, shall not be settled in the place where so born, nor be sent thither for want of other settlement, by a pass, by virtue of this act, but the settlement of such woman shall be deemed the settlement of such child; any law to the contrary notwithstanding.

Sett.

Seet. 26. " And be it further enacted by the authority aforesaid, That any persons aggrieved by any act of any justice or justices of the peace out of sessions, in or concerning the execution of this act, may appeal to the next general or quarter sessions of the county, riding, liberty or division, giving reasonable notice thereof, whose order thereupon shall be final. Persons aggrieved may appeal to the next general or quarter sessions.

Sect. 17. " Provided always, and be it further enacted, That in all cities and towns, where, by virtue of special acts of parliament, the charge of passing vagrants is to be defrayed in other manner than is by this act directed, or where such vagrants, by virtue of special statutes, are to be apprehended and conveyed to the places whither they are to be sent by any person or persons, or officers, other than those named for that purpose in this act, such charge shall be borne and defrayed in such cities and towns in like manner as before the making of this act; and the person or officer liable to such service in the said cities and towns, by virtue of the said special acts of parliament, shall continue liable, as if this act had never been made; and if any person shall be delivered to a beadle within the city or liberties of the city of *London*, to be conveyed on, as directed by this act, the said beadle or constable shall not deliver such person in any other precinct within the said city or liberties, but in the next county, as directed by this act. This act not to alter the manner of passing vagrants, as settled by special acts.

Seet. 18. " And be it further enacted by the authority aforesaid, That where any persons offending against this act, have been committed, as aforesaid, to the house of correction, there to remain until the next general or quarter-sessions, if upon the examination of the persons so committed as aforesaid, no place can be found to which they may be sent by a pass as aforesaid, the said justices shall at the said sessions order such persons to be detained and employed in the house of correction, until they can provide for themselves, or until the justices of the peace, at their general or quarter-sessions, can place them out in some lawful calling, as servants, apprentices, soldiers, mariners or otherwise, either within this realm, or his majesty's colonies or plantations in *America*, which the said sessions are empowered to do in such manner as they shall think fit. How to order vagrants, whose settlements cannot be found.

Seet. 29. " Provided always, That this act or any thing therein contained, or any authority thereby given, shall not in any wise extend to disinherit, prejudice or hinder the heirs or assigns of *John Dutton of Dutton*, late of the county of *Chester*, esquire, deceased, their heirs or assigns, for, touching or concerning the liberty, privilege, pre-eminence or authority, jurisdiction or inheritance, which they, their heirs or assigns, now lawfully use, or have, or lawfully may, or ought to use, within the county palatine of *Chester*, and county of *Chester*, or either of them, by reason of any ancient charters of any kings of this land, or by reason of any prescription, or lawful usage, or title whatsoever. Proviso for heirs or assigns of John Dutton.

Watch.

STAT. 13 *Ed. 1, ft. 2, c. 4.* [*A. D. 1285, intituled*] “At what times the gates of great towns shall be shut; and when the night-watch shall begin and end.”

At what time
great towns
shall be open-
ed and shut.
7 *Cb. 7.*

At what time
the night-
watch shall be-
gin and end.
5 *Ed. 3, c. 14.*
Cro. El. 204.
Savil. 83.

How they
shall be used
who disobey
arrests.

5 *H. 4, c. 3.*

“And for the more surety of the country, the king hath commanded, that in great towns, being walled, the gates shall be closed from the sun-setting until the sun-rising; (2) and that no man do lodge in suburbs, nor in any place out of the town, from nine of the clock until day, without his host will answer for him. (3) And the bailiffs of towns every week, or at the least every fifteenth day, shall make inquiry of all persons being lodged in the suburbs, or in foreign places of the towns. (4) And if they do find any that have lodged or received any strangers or suspicious person, against the peace, the bailiffs shall do right therein. (5) And the king commandeth, that from henceforth all towns be kept as it hath been used in times passed, that is to wit, from the day of the *Ascension* unto the day of *St. Michael*, in every city six men shall keep at every gate, in every borough twelve men, every town six or four, according to the number of inhabitants of the town, and shall watch the town continually all night, from the sun-setting unto the sun-rising. (6) And if any stranger do pass by them, he shall be arrested until morning; and if no suspicion be found, he shall go quit; (7) and if they find cause of suspicion, they shall forthwith deliver him to the sheriff, and the sheriff may receive him without damage, and shall keep him safely, until he be acquitted in due manner. (8) And if they will not obey the arrest, they shall levy hue and cry upon them, and such as keep the town shall follow with hue and cry with all the town, and the towns near, and so hue and cry shall be made from town to town, until that they be taken and delivered to the sheriff, as before is said; and for the arrestments of such strangers none shall be punished.”

STAT. 5 *Hen. 4, c. 3.* [*A. D. 1403, intituled*] “Watches shall be made upon the coasts as they were wont to be.”

13 *Ed. 1, stat.*
2, *c. 4.*
Cro. El. 204.

“Item, It is ordained and stablished, That the watch to be made upon the sea coast through the realm shall be made by the number of the people in the places, and in manner and form as they were wont be made in times past, and that in the same case the statute of *Winchester* be observed and kept; (2) and that in the commissions of the peace hereafter to be made this article be put in, That the justices of peace have power thereof to make inquiry in their sessions from time to time, and to punish them which be found in default after the tenor of the said statute.”

Weights and Measures.

STAT. 8 Hen. 6, c. 5. [*A. D. 1429, intituled*] "Every city and borough shall have a common balance and weight."

Sec. 2. "In every city, borough and town, a common balance shall be with common weights sealed, according to the standard of the exchequer, at the common costs of the city, &c. in the keeping of the mayor or constable, at which balance all the inhabitants may freely weigh, without paying, taking nevertheless of foreigners for every draught within the weight of forty pounds, a farthing; and for every draught betwixt forty pounds and an hundred, an halfpenny; and for every draught betwixt a hundred pounds and a thousand pounds, one penny; whereof the weights shall be maintained, and the officers rewarded; and no man shall buy woollen yarn, unless he will make cloth thereof, nor use weights nor measure, nor other thing in the place of weight or measure, that is not sealed according to the standard, nor put any thing to the same that may increase the measure or weight, upon pain of two years imprisonment, and fine and ransom. And the justices of peace, mayors, bailiffs and stewards of franchises, shall have power to examine the trespassers, and inquire of offenders against this ordinance; and every city upon pain of ten pounds, every borough upon pain of a hundred shillings, and every town where a constable is, upon pain of forty shillings, shall have a common balance, with weights."

STAT. 11 Hen. 7, c. 4. [*A. D. 1404, intituled*] "The names of the cities and towns limited for the keeping of weights and measures."

"And where by other statutes it is ordained that every city, borough and town that hath a constable, should have common weights and measures sealed, upon penalty in the same limited, those penalties shall not extend to any town which is no city, borough, nor market-town; provided that this act shall not extend unto any person selling or buying by water measure within shipboard, and the said water measure shall only contain five pecks after the said standard stricken. The examination of the faults above-said, within the five ports, shall be by the lord-warden or his lieutenant. This act shall not extend to the prince within the duchy of Cornwall for any weights belonging to the coinage of tin within Cornwall and Devonshire."

STAT. 16 Car. 1, c. 19. [*A. D. 1640, made, among other purposes,*] "for the reformation of false weights and measures."

Sect. 2. "There shall be one weight and one measure, according to the standard of the exchequer, throughout the realm, and every measure of corn shall be struck without heap; and whosoever shall sell, buy, or keep any other weight or measure whereby any thing is bought or sold, shall forfeit for every offence five shillings, being thereof convicted by the oath of one witness before a justice of peace, mayor or other head officer, which forfeiture shall be levied by the church-wardens and overseers of the poor (or one of them) where the offence shall be committed, to the use of the poor, by distress and sale of goods; and in default of distress, the justice, mayor or head officer, may commit the offender to prison until he pay the sum forfeited.

Sect. 5. "If any mayor or other officer, or any lords of liberties or their agents, shall receive any fines or fees, other than are allowed by statute or custom; or shall take any fee for the marking, signing, or examination of any weights or measures, which have been formerly marked or sealed; or shall impose any fine without a due and legal trial of the offence; or shall otherwise misdemean himself in the execution of his office, he shall forfeit to the poor for the first offence five pounds, for the second ten pounds, and for the third and every other offence twenty pounds, on conviction before one justice, on the oath of one witness; to be levied by the church-wardens or overseers by distress; and for want of distress, to be imprisoned till paid."

STAT. 22 Car. 2, c. 8, and 22 & 23 Car. 2, c. 12. See these acts under title **Corn**.

Witchcraft.

STAT. 9 Geo. 2, c. 5. [A. D. 1736, intituled] "An act to repeal the statute made in the first year of the reign of king James the first, intituled, *An act against conjuration, witchcraft, and dealing with evil and wicked spirits*, except so much thereof as repeals an act of the fifth year of the reign of queen Elizabeth, against conjurations, enchantments, and witchcrafts, and to repeal an act passed in the parliament of Scotland in the ninth parliament of queen Mary, intituled, *Anentis Witchcrafts*, and for punishing such persons as pretend to exercise or use any kind of witchcraft, sorcery, enchantment, or conjuration."

1 James I.
cap. 12, re-
pealed.

"Be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same; That the statute made in the first year of the reign of king James the first, intituled,

tuled, *An act against conjuration, witchcraft, and dealing with evil and wicked spirits*, shall, from the twenty-fourth day of June next, be repealed and utterly void and of none effect (except so much thereof as repeals the statute made in the fifth year of the reign of queen *Elizabeth*) intituled, *An act against conjurations, incantments, and witchcrafts*.

except a clause repealing 5 Ed. 2. cap. 16.

Sect. 2. "And be it further enacted by the authority aforesaid, That from and after the said twenty-fourth day of June, the act passed in the parliament of *Scotland* in the ninth parliament of queen *Mary*, intituled, *Anentis Witchcrafts*, shall be, and is hereby repealed.

The act in Scotland 9. Marie also repealed.

Sect. 3. "And be it further enacted, That from and after the said twenty-fourth day of June, no prosecution, suit, or proceeding, shall be commenced or carried on against any person or persons for witchcraft, sorcery, incantment, or conjuration, or for charging another with any such offence in any court whatsoever in *Great Britain*.

After 24 June, 1736, no person to be prosecuted for witchcraft, &c.

Sect. 4. "And for the more effectual preventing and punishing of any pretences to such arts or powers as are before mentioned, whereby ignorant persons are frequently deluded and defrauded; be it further enacted by the authority aforesaid, That if any person shall, from and after the said twenty-fourth day of June, pretend to exercise or use any kind of witchcraft, sorcery, incantment, or conjuration, or undertake to tell fortunes, or pretend from his or her skill or knowledge in any occult or crafty science to discover where or in what manner any goods or chattels, supposed to have been stolen or lost, may be found; every person, so offending, being thereof lawfully convicted on indictment or information in that part of *Great Britain* called *England*, or on indictment or libel in that part of *Great Britain* called *Scotland*, shall, for every such offence suffer imprisonment by the space of one whole year without bail or mainprize, and once in every quarter of the said year in some market town of the proper county upon the market day there stand openly on the pillory by the space of one hour, and also shall (if the court by which such judgment shall be given shall think fit) be obliged to give sureties for his or her good behaviour, in such sum, and for such time; as the said court shall judge proper according to the circumstances of the offence, and in such case shall be further imprisoned until such sureties be given.

Persons pretending to exercise witchcraft, tell fortunes, or by crafty science to discover stolen goods.

to be imprisoned for a year,

be pillory'd; and bound for good behaviour.

Women.

SEE stat. 3 Ed. 1, c. 13, 6 Ric. 2, c. 6, and 18 Eliz. c. 7, under title Rape.

By stat. 31 Hen. 6, c. 9, If any person take away by force, or otherwise, any woman sole, having any substance of lands, tenements, or moveable

moveable goods, and inforce her before she be set at liberty, to bind herself to him by statute or obligation, such bond shall be void.

STAT. 3 Hen. 7 c. 2. [A. D. 1486, intituled] "The penalty for carrying a woman away against her will that hath lands or goods."

3 Inst. 61.

1 Ventr. 243.

244.

1 Anders. 115.

12 Co. 100.

Cro. Car. 483.

485, 488 492.

Hob. 182.

Kel. 81.

Felony to car-

ry away a wo-

man against

her will, that

hath lands or

goods, or is

heir apparent

to her ances-

tor.

By 39 El. c.

9, this of-

fence is out-

of clergy.

"Item, Where women, as well maidens, as widows, and wives, having substances, some in goods moveable, and some in lands and tenements, and some being heirs apparent unto their ancestors, for the lucre of such substances been oftentimes taken by mis-doers, contrary to their will, and after married to such mis-doers, or to other by their assent, or defoiled, to the great displeasure of God, and contrary to the king's laws, and disparagements of the said women, and utter heaviness and discomfort of their friends, and to the evil ensample of all other: (2) It is therefore ordained, established, and enacted by our sovereign lord the king, by the advice of the lords spiritual and temporal, and the commons in the said parliament assembled, and by the authority of the same, That, what person or persons from henceforth that taketh any woman (so) against her will unlawfully, that is to say, maid, widow, or wife, that such taking, procuring, and abetting to the same, and also receiving wittingly the same woman so taken against her will, and knowing the same, be felony; (3) and that such mis-doers, takers, and procurators to the same, and receitors, knowing the said offence in form afore said, be henceforth reputed and judged as principal felons. (4) Provided alway, that this act extend not to any person taking any woman, only claiming her as his ward or bond woman."

STAT. 4 & 5 Phil. & Ma. c. 8. [A. D. 1557, intituled] "An act for the punishment of such as shall take away young women that be inheritors, being within the age of sixteen years, or marry them without the consent of their parents."

Punishment of
such as take
away maid-
ens, &c. with-
in sixteen years
of age, &c.

"Where maidens and women children of noblemen, gentlemen and others, as well such as be heirs apparent to their ancestors, as others, having left unto them by their father, or other ancestor and friends, lands, tenements and hereditaments, or other great substances in goods and chattels moveable, for, and to the intent to advance them in marriage, somewhat like according to their degrees, and as might be most for their surety and comfort, as well for themselves as of all other their friends or kinsfolks, be oftentimes unawares to their said friends and kinsfolks, by flattery, trifling gifts, and fair promises, of many unthrifty and light personages, and thereto by the intreaty of persons of lewd demeanour, and others that for rewards, buy and sell the said maidens and children secretly allured and won to contract matrimony with the said unthrifty and light personages, and thereupon either with sleight or force, oftentimes be taken and conveyed away from their said parents, friends or kinsfolks, to the high displeasure of Almighty God, disparagement of the said children, and extream continual heaviness of all their friends: which

ungodly dealing, for lack of wholsome laws to the redress thereof, remaineth a great, familiar and common mischief in this our commonwealth.

Stat. 2. "For remedy whereof, be it enacted by the king and queen's majesties, the lords spiritual and temporal, and the commons of this present parliament assembled, and by the authority of the same, That it shall not be lawful to any person or persons, to take or convey away, or cause to be taken or conveyed away, any maid or woman child unmarried, being within the age of sixteen years, out of, or from the possession, custody or governance, and against the will of the father of such maid or woman child, or of such person or persons to whom the father of such maid or woman child, by his last will and testament, or by any other act in his life-time, hath or shall appoint, assign, bequeath, give or grant the order, keeping, education or governance of such maid or woman child, except such taking and conveying away as shall be had, made or done, by or for such person or persons, as without fraud or covin be or then shall be the master or mistress of such maid or woman child, or the guardian in socage, or guardian in chivalry, of or to such maid or woman child.

Stat. 3. "And be it further enacted by the authority aforesaid, That if any person or persons above the age of fourteen years, shall from and after the first day of *April* next coming, unlawfully take or convey, or cause to be taken or conveyed, any maid or woman child unmarried, being within the age of sixteen years, out of, or from the possession, and against the will of the father or mother of such child, or out of, or from the possession, and against the will of such person or persons as then shall happen to have, by any lawful ways or means, the order, keeping, education or governance of any such maiden or woman child; that then every such person and persons (so offending) being thereof lawfully attainted and convicted by the order and due course of the laws of this realm (other than such of whom such person taken away shall hold any lands or tenements by knights service) shall have and suffer imprisonment of his and their bodies, by the space of two whole years, without bail or mainprise, or else shall pay such fine for his or their said offence, as shall be assessed by the council of the queen's highness, her heirs and successors, in the Star-chamber at *Westminster*.

Stat. 4. "And be it further enacted by the authority aforesaid; That if any person or persons, after the said day, shall so take away, or cause to be taken away, as is aforesaid, and deflower any such maid or woman child, as is aforesaid, or shall against the will, or unknowing of or to the father of any such maid or woman child, if the father be in life, or against the will, or unknowing of or to the mother of any such maid or woman child, (having the custody or governance of such child; if the father be dead) by secret letters, messuages, or otherwise, contract matrimony with any such maiden or woman child, except such contracts of matrimony as shall be made by the consent of such person or persons, as by the title of wardship; shall then have or be intituled to have the marriage of such maid or woman child; that then every such person or persons so offending being thereof lawfully convicted, as is aforesaid, shall suffer imprisonment

3 Mod. 168.

169.

4 Mod. 145.

The penalty for taking a maid under 16 years of age.

2 Mod. 128.

The penalty for taking away, deflowering or contracting matrimony with a woman under 16 years of age.

of

of his or their bodies, by the space of five years, without bail or main-prize, or else shall pay such fine for his or their said offence, as shall be assessed by the said council in the said Star-chamber; (2) the one moiety of which fines shall be to the king and queen's majesties, her heirs and successors, the other moiety to the parties grieved.

Whom may hear
and determine
the offences
aforesaid.

Stat. 5. "And be it further enacted by the said authority, That the king and queen's highness's honourable council of the Star-chamber, by bill of complaint or information, and justices of assize by inquisition or indictment, shall have authority by virtue of this act, to hear and determine the said offences; (2) upon every which indictment and inquisition, such process shall be awarded and lie, as upon an indictment of trespass at the common law.

The forfeiture
of a woman
consenting to
an unlawful
contract.
3 Mod. 84.

Stat. 6. "And further be it enacted by the authority aforesaid, That if any woman child, or maiden, being above the age of twelve years, and under the age of sixteen years, do at any time consent or agree to such person that so shall make any contract of matrimony, contrary to the form and effect of this statute, that then the next of the kin of the same woman child or maid, to whom the inheritance should descend, return, or come after the decease of the same woman child and maid, shall from the time of such assent and agreement, have, hold and enjoy all such lands, tenements and hereditaments as the same woman child and maiden had in possession, reversion or remainder, at the time of such assent and agreement, during the life of such person that shall so contract matrimony; (2) And after the decease of such person so contracting matrimony, that then the said lands, tenements and hereditaments, shall descend, revert, remain, and come to such person or persons, as they should have done, in case this act had never been had ne made, other than to him only that so shall contract matrimony.

Orders for
orphans.

Stat. 7. "Provided always, and be it enacted, that this act, nor any thing therein contained, shall extend to take away or diminish any liberty, custom or authority, touching or concerning any orphan or orphans, which now be, or hereafter shall be within the city of *London*, or any other city, borough or town where orphans are commonly used to be provided for, either by grant or by custom, but that the lord mayor of the said city of *London*, and the aldermen of the same for the time being, and all and every other head officers of any other city, borough or town where such orphans be provided for, shall and may have and take like rule, order, keeping and charge of such orphan and orphans, and of all their lands, tenements, goods and chattels, as heretofore they or any of them lawfully had or used, or lawfully might have had and used, as if this act had not been made."

By *Stat. 3 Will. 3, c. 9*, Women convicted of crimes for which men have their clergy, shall be punished as men. But by *4 & 5 W. 3, c. 24, sect. 13*, A woman shall have the benefit of the said act but once. See title **Larceny**: and for other matters relating to women, see **Marriage**, **Polygamy**.

Wood.

Wood.

STAT. 13 *Ed. 1, ft. 1, c. 46.* [*A. D. 1285, intituled,*] “Lords may approve against their neighbours.”

(8) “And where sometime it chanceth, that one having right to ap-
prove, doth then levy a dyke or an hedge, and some by night, or at an-
other season, when they suppose not to be espied, do overthrow the
hedge or dyke, and it cannot be known by verdict of the assise or jury,
who did overthrow the hedge or dyke, and men of the towns near will
not indite such as be guilty of the fact, (9) the towns near adjoining shall
be distrained to levy the hedge or dyke at their own cost, and to yield
damages.”

By *Stat. 3 & 4 Ed. 6, c. 3, sect. 4*, All such persons as shall bring assize
upon the *Stat. 13 Ed. 1, c. 46*, and have judgment to recover, shall have
their damages treble.

By *Stat. 35 Hen. 8, c. 17, sect. 7*, No person who shall have any woods,
or under-woods, wherein others have common of pasture, shall cut down
the same until the fourth part thereof shall be set out and fenced by
the lord, with the assent of the major part of the tenants; and if they
cannot agree, then two justices being thereunto appointed by the more
number of the justices of the shire in their quarter-sessions, shall set out
the same.

By *Stat. 37 Hen. 8, c. 6, sect. 4*, If any person shall maliciously, wil-
lingly, and unlawfully burn, or cause to be burned, any heap of wood
prepared, cut or felled, for making of coals, billets or talwood; or bark
any apple trees, pear trees, or other fruit trees, he shall forfeit to the
party grieved, treble damages, by action of trespass at the common law,
and also ten pounds to the king.

By *Stat. 1 & 2 P. & M. c. 5, f. 2*, No person shall carry any wood out
of the realni, on pain that the owner of the ship forfeit the ship and
tackle, the owner of the wood, double value of the wood, and the master
and mariners all their goods, and be imprisoned for a year.

Sect. 3. “And if any person shall carry any wood to any ship, to be
transported; the owners, masters, and mariners, shall forfeit in like
manner.

Sect. 4. “And if any person shall obtain of the king a licence to
transport wood, and shall carry more than is contained in his licence, he
shall forfeit treble value, and be imprisoned for a year.

Sect. 5. “And they who have licence shall lade at one place certain;
on pain of forfeiting all their goods and chattels.

A ditch or
hedge of
ground ap-
proved cast
down.
By 6 Geo. 1,
c. 16; sect. 1,
the remedy of
the act is ex-
tended to the
destroyers of
trees, &c. by
night or day,
&c.

Seft. 6. "The said forfeitures to be half to the king, and half to him that shall sue in any court of record: And all and singular justices of the peace, within three years after any offence committed, may hear and determine the same by a jury.

By *Stat.* 43 *El.* c. 7, Persons robbing orchards, breaking hedges, pulling up fruit trees, or spoiling wood growing, shall make such recompence as a justice shall appoint. See this act at large under title **Corn.**

STAT. 15 *Car.* 2, c. 2, [*A D.* 1663, intituled,] "An act for the punishment of unlawful cutting or stealing, or spoiling of wood and under-woods, and destroyers of young timber-trees."

43 *Eliz.* c. 7.
The punishment for cutting and spoiling any woods

"Whereas in one act of parliament made in the three and fortieth year of the reign of the late queen *Elizabeth*, intituled, *An act to avoid and prevent divers misdemeanors in idle and lewd persons*, among other things it is enacted, That all and every such lewd person and persons that shall cut or spoil any woods or under-woods, poles or trees standing, and their procurer or procurers, receiver or receivers knowing the same, and being thereof lawfully convicted by his or their own confession, or by the testimony of one sufficient witness, upon oath before some one justice of peace, or other head officer of the county or place where such offence was committed, shall give the party or parties satisfaction for his or their damages for the first fault: (2) And if such offender or offenders shall by such justice of peace or head officer be thought not able or sufficient; or if such offender or offenders do not make such satisfaction, as aforesaid, That then the said justice of peace or head officer shall commit the said offender or offenders to the constable, or other inferior officer, to receive the punishment of whipping, as in the said act more fully doth appear.

Seft. 2. "And whereas it is found by daily experience, especially in and about *London*, and other great towns, where a great number of such idle and lewd persons do shelter themselves, that this act hath not sufficiently prevented the said mischief of cutting and spoiling of woods and under-woods, as was intended, as well because the said offences are committed in such a close and clandestine manner, that there is none witnesses to them, but such as are partakers to the offence; as also because the said punishment is too small for so great a fault, which is not only prejudicial and hurtful to the owners of the said woods, but very mischievous and damageable to the commonwealth: (2) Be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and the commons in this present parliament assembled, and by the authority of the same, That from and after the four and twentieth day of *June* next ensuing, every constable, headborough, or any other person, in every county, city, town corporate, or other place where they shall be officers or inhabitants, shall and may by virtue of this present act have full power and authority to apprehend, or cause to be apprehended all and every person or persons they shall suspect having, or carrying, or any ways conveying any burthen or bundles of any kind

Who may apprehend wood stealers.

of wood, under-wood, poles, or young trees, or bark, or bast of any trees, or any gates, stiles, posts, pales, rails or hedge-wood, broom or furze; (2) and by warrant under the hand and seal of any one justice of the peace directed to any officer, such officer shall have power to enter into and search the houses, out-houses, yards, gardens, or other places belonging to the houses of all and every person or persons they shall suspect to have any kind of wood, under-woods, poles, or young trees, or bark, or bast of any trees, or any gates, stiles, posts, pales, rails, or hedge-wood, broom or furze; (4) and wheresoever they find any such, to apprehend, and cause to be apprehended all and every person and persons suspected for the cutting and taking of the same, and them, and every of them, as well those apprehended carrying, or any ways conveying any kind of wood, under-wood, poles, or young trees, or bark, or bast of any trees, or any gates, stiles, posts, pales, rails or hedge-wood, broom or furze; as also those in whose houses or other places belonging to them, any such wood, under-wood, poles, or young trees, or bark, or bast of any trees, or any gates, stiles, posts, pales, rails, or hedge-wood, broom or furze, shall be found, to carry before one justice of the peace of the same county, city, or town corporate; (5) And if the said person and persons so suspected, apprehended, and carried before the said justices, do not then and there give a good account how he and they came by such wood, or under-wood, poles, or young trees, or bark, or bast of any trees, or gates, stiles, posts, pales, rails, or hedge-wood, broom, or furze, by the consent of the owner, such as shall satisfy the said justice, or else shall not within some convenient time to be set them by the said justice, produce the party or parties of whom they bought the same wood, under-wood, poles, or young trees, or bark, or bast of trees, gates, stiles, posts, pales, rails or hedge-wood, broom or furze, or some other credible witness to depose upon oath such sale of the said wood, under-wood, poles, or young trees, or bark or bast of trees, gates, stiles, posts, pales, rails or hedge-wood, broom or furze, (which oath the said justice hath hereby power to administer) That then the said person or persons so suspected, and not giving such good account, nor producing any such witness upon oath to testify the said sale, as aforesaid, shall be deemed and adjudged as convicted of the said offence of cutting and spoiling of the same woods, under-woods, poles, or young trees, or bark or bast of trees, gates, stiles, posts, pales, rails or hedge-wood, broom or furze, within the meaning of the said statute of queen *Elizabeth*, and shall be liable to the punishment ^{43 Eliz. c. 7.} therein contained, and to such other proceedings and punishments as by this present act shall be further constituted and appointed on that behalf.

Sec. 3. " And be it therefore enacted by the authority aforesaid, That all and every person or persons convicted of the said offence in manner and form before in this act mentioned, shall for the first offence give the owner or owners such recompence or satisfaction for his or their damages, and within such time as the said justice shall appoint, and over and above pay down presently unto the overseers, for the use of the poor of the parish where the said offence or offences were committed, such sum of money

The second
offence.

Buyers of
stolen wood,
how to be
dealt withal.

Within what
time offenders
must be ques-
tioned within
this act.

money (not exceeding ten shillings) as the said justices shall think meet; (2) and if such offender or offenders do not make recompence or satisfaction to the said owner or owners, and also pay the said sum to the poor in manner and form aforesaid, then the said justice shall commit the said offender or offenders to the house of correction for such time as the said justice shall think fit, not exceeding one month, or to be whipped by the constable, or other officer, as in his judgment shall seem expedient: (3) And if such person or persons shall again commit the said offence, and be thereof convicted as before, that then they and every of them so offending the second time, and thereof so convicted, shall be sent to the house of correction for one month, and be there kept to hard labour: (4) And if such person or persons shall again commit the said offence, and be thereof convicted as before; that then they and every of them so offending the third time, and thereof so convicted, shall be taken, adjudged and deemed as incorrigible rogues.

Sec. 4. " Provided always, and it is further enacted by the authority aforesaid, That whosoever shall buy any burthens of wood, or any poles or sticks of wood, or any other the premisses particularly mentioned in this bill, which may be justly suspected to have been stolen, or unlawfully come by, That it shall and may be lawful to and for the said justices of the peace, mayors, bailiffs and head officers, or any one of them, within their respective jurisdictions, upon complaint to them thereof made, to examine the matter upon oath, which they and every of them respectively are hereby authorized to administer: (2) And if they shall find that the same was bought of a person who might justly be suspected to have stolen, or unlawfully come by the same, and that the same was stolen, or unlawfully come by, That in such case the said justices of peace, mayors, bailiffs, or other head officers, or any one of them respectively, shall and may award the party who bought the same to pay treble the value of the same to the party from whom the same was stolen, or unlawfully taken; and in default of present payment thereof, to issue forth their respective warrants to levy the same by distress and sale of the offenders goods, rendring the overplus to the party; and in default of such distress, to commit the party to the gaol at his own charge, there to remain one month without bail.

Sec. 5. " Provided always, That no person or persons shall be questioned for any offence upon this law, that hath been punished for the same offence by any former law; (2) nor shall be punished by this law, unless he be questioned within six weeks after the offence committed."

By *Stat. 22 & 23 Car. 2, c. 7*, Treble damages are given for throwing down inclosures, &c. And three or more justices may enquire of the offence, and punish the offenders. See this act at large under **Burning**.

By *Stat. 1 Geo. 1, st. 2, c. 48*, Timber-trees, &c. maliciously broken down, &c. the parish shall make good the damage to the owner. And two justices or quarter-sessions may finally determine the offences. See this act at large under **Burning**.

By

By *Stat. 6 Geo. 1, c. 15*, Owner of trees, &c. cut down, spoiled, &c. either by day or by night, shall have satisfaction from the inhabitants of the place; and two justices of the peace, or the sessions, may hear complaints and finally determine all offences against this act. See this act at large under **Burning**.

By *Stat. 9 Geo. 1, c. 22*, Destroying trees or burning wood is felony without benefit of clergy. See this act at large under **Black-Act**.

STAT. 29 Geo. 2, c. 36. [A. D. 1756, intituled] “ An Act for inclosing, by the mutual Consent of the Lords and Tenants, Part of any Common, for the Purpose of planting and preserving Trees fit for Timber or Underwood; and for more effectually preventing the unlawful Destruction of Trees.”

“ Whereas by the statute made at *Merton*, it was provided and granted, Statute of Merton. That lords of wastes, woods and pastures in which their tenants have common of pasture, reserving to their tenants sufficient pasture, as much as belongeth to their tenements, with sufficient ingress and egress to the same, may approve the residue of such wastes, woods and pastures; And whereas by a statute made in the thirteenth year of the reign of king *Edward the third*, commonly called *the statute of Westminster the second*, it was ordained, That the said statute of *Merton* should hold place between lords of wastes, woods and pastures, and their neighbours, having common appurtenant therein; and provision is thereby made against casting down dikes and hedges levied by such as have right so to approve; And whereas by an act made in the third and fourth year of the reign of king *Edward the sixth*, intituled, *An Act concerning the Approvements of Moors and Waste Grounds*; the said statutes, and all articles thereof, then not repealed, were confirmed: And whereas the said provisions for the approvement of wastes, woods and pastures, have been in many cases, rendered ineffectual, by the contradiction and dissent of a few persons having right of common in the said wastes, woods and pastures; who under pretence that sufficient pasture is not reserved to them, disturb the lords of such wastes, woods and pastures, or their assigns, in the possession of the ground and soil so approved, and discourage them from asserting their right to make or continue such approvement: And whereas the general provisions made by an act of the thirty-fifth year of the reign of king *Henry the eighth*, and by several other acts of parliament, for preserving woods; and the particular provisions made by two several acts of parliament of the twentieth year of the reign of king *Charles the second*, intituled, *An Act for the Increase and Preservation of Timber within the Forest of Dean*; and the other of the ninth and tenth year of the reign of king *William the third*, intituled, *An Act for the Increase and Preservation of Timber in the New Forest in the county of Southampton*; whereby part of the waste lands of the said several forests are directed to be inclosed and kept in severalty for the growth and preservation of timber, have not been duly put in execution: And whereas, for want of a proper supply of timber of the growth of this kingdom,

Proprietors of
wastes, &c.
and persons
having a right
of common,

may by con-
sent inclose
any part
thereof, for
planting and
preserving
timber or un-
derwood.

If any recom-
pence be
agreed to be
given to the
tenant; in
what manner,
the same is to
be made, and
applied.

If lords and
tenants join

kingdom, a great quantity of foreign timber is necessarily used for building ships and houses, and for other purposes; and the general price of timber and wood is greatly increased: And whereas many tracts of waste land, unfit for tillage or pasture, but capable of producing different kinds of trees, may conveniently be inclosed for the growth of timber and underwood, to the advantage both of the owners of the ground and soil of such wastes, and also such as have right of common therein; and such inclosure will also be of publick utility; Be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal and commons in this present parliament assembled, and by the authority of the same, That it shall and may be lawful to and for his majesty, his heirs and successors, and all other owners of wastes, woods and pastures, in that part of *Great Britain* called *England*, wherein any person or persons, or body or bodies politick or corporate, hath or have right of common of pasture, by and with the assent of the major part in number and value of the owners and occupiers of tenements to which the said right of common of pasture doth belong, and to and for the major part in number and value of the owners and occupiers of such tenements, by and with the assent of the owner or owners of the said wastes, woods and pastures, and to and for any other person or persons, or body politick or corporate, by and with the assent and grant of the owner or owners of such wastes, woods and pastures; and the major part in number and value of the owners and occupiers of such tenements, to inclose and keep in severalty, for the growth and preservation of timber or underwood, any part of such wastes, woods and pastures, for such time, and in such manner, and upon such conditions, as shall agreed by them respectively.

SECT. 2. " Provided nevertheless, and be it enacted by the authority aforesaid, that in case any recompence shall be agreed to be given for such inclosure, to or to the benefit of the owners and occupiers of tenements, to which the right of common in such wastes, woods and pastures doth belong, such recompence shall be made either by a grant of a share of the profit which shall arise from the sale of the timber or underwood growing on the ground or soil so inclosed, or by a grant of other lands, tenements or hereditaments; or by some annuity or rent-charge issuing out of the said ground or soil so inclosed, or out of other lands, tenements or hereditaments; or shall be paid in money, to be placed out at interest on publick securities, or laid out in the purchase of lands, tenements or hereditaments, or of some annuity or rent-charge issuing out of lands, tenements or hereditaments; and the produce of such lands, tenements or hereditaments, or such annuity or rent-charge, or the interest of such money, until the same shall be laid out in such purchase as aforesaid, shall be paid from time to time, to the overseers or overseer of the poor of the said parish or township, and shall be by them or him applied towards the relief of the poor of the parish or township where such wastes, woods or pastures shall lie, and accounted for in such manner as the rates for relief of the poor are by law directed to be accounted for; and in case the owner or owners of any such wastes, woods or pastures, and the major part in number

number and value of the owners and occupiers of the tenements to which such right of common doth belong, shall jointly agree to assign and grant their respective right and interest in any part of the said wastes, woods or pastures, for the purpose of making such inclosures as aforesaid, to any other person or persons, or body politick or corporate; and the owner or owners of such wastes, woods and pastures, shall not have an estate in fee-simple therein, or shall be disabled or restrained from alienating the same, the recompence to be paid to any such owner or owners, shall be either by a grant of a share of the profit which shall from time to time arise from the sale of the timber or underwood growing on the ground or soil so inclosed, or by a grant of other lands, tenements or hereditaments, or of an annuity or rent-charge issuing out of the said ground or soil so inclosed, or out of other lands, tenements or hereditaments; such equivalent to be held and enjoyed by the owner or owners of such wastes, woods and pastures, and such as shall be intituled to the same in reversion, remainder or succession, in like manner as the estate in such wastes, woods or pastures, is limited to be held and enjoyed; and in case the inhabitants of any parish or township, shall be willing to acquire such right of inclosure, for the employment and benefit of the poor of the said parish or township, and any recompence shall be agreed to be given for the same, it shall and may be lawful for the overseer or overseers of the poor of such parish or township (by the consent and direction of the major part of the inhabitants thereof, assembled at a vestry or public meeting to be held for that purpose, public notice being first given of such intended vestry or meeting, in the church or chapel belonging to such parish or township, on three *Sundays* at the least before such vestry or meeting shall be held) to pay or purchase such recompence out of any monies arising from the rates raised or to be raised, for the relief of the poor; and out of such monies to pay from time to time, such charges and expences as shall be necessary for inclosing and preserving such grounds so inclosed; and such overseers or overseer shall from time to time apply the profit which shall arise from the sale of the timber or underwood growing thereon, towards the relief of the poor of the said parish or township; and shall account for the same in like manner as he and they is and are by law obliged to account for the rates collected for the relief of the poor.

Sec. 3. " Provided always, That every agreement for any such inclosure shall be in writing, and signed by the parties, and the same shall be registred and inrolled by the clerk of the peace for the county, riding or division, where such wastes, woods or pastures, or the greater part of them shall lie, within three months next after the execution of such agreement.

Sec. 4. " Provided also, and be it enacted, That it shall and may be lawful to and for all persons or bodies politick or corporate, who shall think themselves injured or aggrieved by such agreement, or for any persons in their behalf, within six months next after any such agreement shall be registered and inrolled in manner aforesaid, to make complaint thereof by appeal to the justices of the peace at any quarter-sessions to be held for the same

in assigning
their rights of
inclosure to
any other per-
sons,

how recom-
pence is to be
made to the
lord, if he have
not the fee-
simple there-
in, or be dis-
abled to alien.

Parish willing
to purchase
such right for
the employ-
ment of their
poor,

recompence
and other
charges, to be
paid out of
the poors rate,
and the profits
to be applied
in aid thereof.

Agreements
to be signed
and registred
within three
months.

Persons ag-
grieved may
appeal to the
quarter-ses-
sions.

In case there be no appeal, agreement to stand good. Bodies politic, guardians and trustees, impowered to agree to such inclosure.

If any trees growing within such inclosures shall be unlawfully cut or destroyed,

damages to be made good by the adjoining parishes; unless the offender be convicted within six months.

Offences to be determined by two justices, or at the sessions.

Penalty on conviction, the same as by 6 Geo. 1, c. 16.

same county, riding or division, who are hereby authorized and required, to hear and determine such appeal, and whose determination therein shall be final; and if no such appeal shall be made, then the said agreement so registered and inrolled as aforesaid, shall be for ever binding to all persons whatsoever, without any further or other appeal.

Sect. 5. " And be it further enacted by the authority aforesaid, That it shall and may be lawful to and for all bodies politick or corporate, whether aggregate or sole, and all feoffees in trust, executors, administrators, guardians, committees or other trustees whatsoever, for and on the behalf of any infants, femmes covert, lunaticks, ideots or other persons whatsoever, and the husbands of femmes covert, who shall be seised, possessed of or interested in, any such waste, wood or pasture, or any right of common in such wastes, woods or pastures, to agree to any such inclosure; and all such agreements so made, shall be valid to all intents and purposes; and such bodies politick or corporate, feoffees in trust, executors, administrators, guardians, committees and other trustees and husbands of femmes covert, shall be indemnified for what they shall so do by virtue of this act.

Sect. 6. " And be it further enacted by the authority aforesaid, That if any person, from and after the time hereby limited for bringing such appeal against any such agreement for the inclosure of any part of such wastes, woods or pastures, shall either by day or by night unlawfully cut, take, destroy, break, throw down, bark, pluck up, burn, deface, spoil or carry away, any trees growing within any such inclosure, without the consent of the owner or owners thereof, such owner or owners shall have such remedy, and have and receive such satisfaction and recompence of and from the inhabitants of the parishes, towns, hamlets, villages or places adjoining to such inclosures, and recover such damages against the inhabitants of such parishes, towns, hamlets, villages or places adjoining, and in the same manner and form as is directed for dikes and hedges overthrown by the said act made in the thirteenth year of the reign of King Edward the first, unless the offender or offenders shall be convicted of such offence within the space of six months next after the commission thereof.

Sect. 7. " And be it further enacted by the authority aforesaid, That it shall and may be lawful to and for any two justices of the peace of the county, riding, division, city, town, liberty or place, wherein any such offence shall be committed, or for the justices of the peace for such county, riding, division, city, town, liberty or place, in open sessions, upon complaint to them made, to cause every such offender to be apprehended for such trespass, and to hear and determine the same, and to inflict the like penalty and punishment on every offender by them convicted, as is directed to be inflicted on offenders by an act made in the sixth year of the reign of his late majesty king George the first, intituled, *An act to explain and amend an act passed in the first year of his majesty's reign, intituled, An act to encourage the planting of timber trees, fruit trees, and other trees for ornament, shelter or profit; and for the better preservation of the same; and for the preventing the burning of woods; and for the better preservation of the fences of such woods.*

Sect.

Sect. 8. “ And be it further enacted by the authority aforesaid, That if any person from and after the first day of *July*, one thousand seven hundred and fifty-six, shall unlawfully cut, take, destroy, break, throw down, bark, pluck up, burn, deface, spoil or carry away any tree growing in any waste, wood or pasture, in which any person or persons, or body or bodies politick or corporate, hath or have right of common, every such offender shall and may be in like manner convicted of such offence, and shall incur the like penalty. and persons unlawfully cutting or destroying trees, on common-able grounds, to be in like manner convicted and punished.

Sect. 9. “ And whereas by an act made in the ninth year of the reign of his late majesty king *George* the first, intituled, *An act for the more effectual punishing wicked and evil disposed persons going armed in disguise, and doing injuries and violence to the persons and properties of his majesty's subjects, and for the more easy bringing offenders to justice*; it is amongst other things enacted, That the inhabitants of every hundred within that part of *Great Britain* called *England*, shall make full satisfaction and amends to all and every person and persons, their executors and administrators, for the damages they shall have sustained or suffered by the cutting down or destroying any trees which shall be done or committed by any offender or offenders against the said act, to be recovered in manner as by the act is directed: and whereas doubts have arisen whether the provision made by the said act made in the ninth year of the reign of his said late majesty, has not repealed and annulled the remedy given by the said acts of the first and sixth years of the reign of his said late majesty; for obviating the said doubt, be it enacted by the authority aforesaid, That from and after the first day of *July*, one thousand seven hundred and fifty-six, it shall and may be lawful for any person, or body politick or corporate, to take remedy for the before mentioned damages either against the parish, town, hamlet, vill or place, where any of the said offences shall be committed, according to the powers given by the said acts of the first or sixth years of his said late majesty's reign, or on the hundred wherein any of the said offences shall be committed, as to such person, or body politick or corporate shall seem most meet; any thing in the said act made in the ninth year of the reign of his late majesty to the contrary notwithstanding. Doubt arising on 9 Geo. 1, c. 22, s. 7, obviated; and remedy for damages mentioned in the said clause, may be taken according to the acts of 1 Geo. 1, c. 8; & 6 Geo. 1, c. 16.

Sect. 10. “ And be it further enacted by the authority aforesaid, That if any action shall be brought against any person for any matter or thing done by virtue or in execution of this act, the defendant or defendants in every such action shall and may plead the general issue, and give this act, and the special matter in evidence, on any trial to be had in such action; and if the plaintiff or plaintiffs shall discontinue such action, or become nonsuit; or if judgment shall be given against such plaintiff, then the defendant or defendants, in every such action, shall recover treble costs of suit. General issue. Treble costs.

STAT. 31 *Geo. 2, c. 41.* [*A. D. 1758, intituled*] “ An act to amend and render more effectual an act passed in the twenty-ninth year of his present majesty's reign, intituled, *An act for inclosing, by the mutual consent of the lords and tenants, part of any common, for the purpose of planting and*

preserving trees fit for timber or underwood; and for more effectually preventing the unlawful destruction of trees."

Preamble, re-
citing several
clauses in act
29 Geo. II.

"Whereas by an act made in the twenty-ninth year of the reign of his present majesty, intituled, *An act for inclosing, by the mutual consent of the lord and tenants, part of any common, for the purpose of planting and preserving trees fit for timber or underwood; and for more effectually preventing the unlawful destruction of trees*; it is, amongst other things, enacted, That it shall and may be lawful to and for his majesty, his heirs, and successors, and all other owners of wastes, woods, and pastures, in that part of *Great Britain* called *England*, wherein any person or persons, or body or bodies politic or corporate, hath or have a right of common of pasture, by and with the assent of the major part in number and value of the owners and occupiers of tenements, to which the said right of common of pasture doth belong, and to and for the major part in number and value of the owners and occupiers of such tenements, by and with the assent of the owner or owners of the said wastes, woods, and pastures, and to and for any other person or persons, or body politic or corporate, by and with the assent and grant of the owner or owners of such wastes, woods, and pastures, and the major part in number and value of the owners and occupiers of such tenements, to inclose and keep in severalty, for the growth and preservation of timber or underwood, any part of such wastes, woods, and pastures, for such time, and in such manner, and upon such conditions, as shall be agreed by them respectively: and whereas it is by the said act provided, That in case any recompence shall be agreed to be given for such inclosure, to or for the benefit of the owners and occupiers of the tenements to which the right of common in such wastes, woods, and pastures, doth belong, such recompence shall be made either by a grant of a share of the profit which shall arise from the sale of the timber or underwood growing on the ground or soil so inclosed, or by a grant of other lands, tenements, or hereditaments, or by some annuity or rent charge issuing out of the said ground or soil so inclosed, or out of other lands, tenements, or hereditaments, or shall be paid in money, to be placed out at interest or public securities, or laid out in the purchase of lands, tenements, or hereditaments, or of some annuity or rent charge issuing out of lands, tenements, or hereditaments; and the produce of such lands, tenements, or hereditaments, or such annuity or rent charge, or the interest of such money, until the same shall be laid out in such purchase, as aforesaid, shall be paid, from time to time, to the overseers or overseer of the poor of the said parish or township, and shall be by them or him applied towards the relief of the poor of the parish or township where such wastes, woods, or pastures, shall lie, and accounted for in such manner as the rates for relief of the poor are by law directed to be accounted for: and whereas, in many cases, the right of common of pasture in the ground or soil inclosed, or intended to be inclosed, may not belong to all the owners and occupiers of tenements within the parishes or townships wherein such wastes, woods, or pastures, shall lie: and whereas the owners and occupiers of such tenements,

ments, to which such peculiar right of common doth belong, may refuse their assent to an inclosure, the recompence for which is applicable to the general relief of the poor of the parish, and not to them in proportion to their particular interests; and yet they may be willing to accept a different recompence from that which is provided by the said act; be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That from and after the first day of *August*, one thousand seven hundred and fifty-eight, every recompence to be made by virtue of the said act, shall be made to the person or persons interested in the said right of common, in proportion to their respective interest or interests therein; and not to be paid to the overseer or overseers of the poor, as is directed by the said act.

The recompence to be made under the recited act in respect of the rights of common of pasture in grounds to be inclosed for planting trees, is to be paid to the persons respectively interested therein, and not to the overseers of the poor.

Sect. 2. "And whereas doubts may arise whether tenants for life, or for terms of years, determinable upon one or more life or lives, be owners, within the meaning of this act, and that of the twenty-ninth of his present majesty's reign; be it enacted by the authority aforesaid, That the powers given to such owners by this act, and the said act of the twenty-ninth of his present majesty's reign, may be executed by such tenants for life, or years, during their respective interests.

recited and this act, during their respective interests,

Sect. 3. "Provided always, That nothing done by such tenants for life, or terms of years, by virtue of this act, or by the act of the twenty-ninth of his present majesty's reign, shall have effect or continuance after the determination of the estate of such tenants for life, or terms of years."

But no act of theirs is to have effect, after the determination of such their estate.

STAT. 4 Geo. 3, c. 31. [*A. D.* 1764] made, among other purposes, "to prevent the destruction of trees and underwoods growing in forests and chafes."

Sect. 6. "And whereas the laws in being are found to be ineffectual for preventing the destruction of timber trees, and other trees, underwood and covert, growing upon the forests and chafes within this kingdom; be it further enacted by the authority aforesaid, That from and after the passing of this act, it shall and may be lawful for every surveyor of his majesty's woods, and his lawful deputy, and also for the officers and keepers of any forest or chafe, to seize and take away, for his and their own use, any saw, axe, hatchet, bill-hook, or other instrument, used by any person, or persons whom they shall find unlawfully stocking up, sawing, cutting down, topping, lopping, or destroying, any timber tree, or other tree, underwood or covert, within such forest or chafe."

Officers and keepers of woods and chafes, &c. may seize any saw or other instrument used in unlawfully cutting any trees, &c. therein.

Woollen Manufacture.

Importation
of cloth.

BY stat. 11 *Ed.* 3, c. 3, and 4 *Ed.* 4, c. 1, *sect.* 7, No foreign woollen cloth shall be imported, on pain of forfeiture, and further punishment at the king's will.

Exportation
of cloth not
fulled.

By stat. 7 *Ed.* 4, c. 3, No cloth, not fulled, shall be exported, on pain of forfeiting the same, half to the king, and half to him that will sue.

Exportation
of cloth not
dressed.

By stat. 3 *Hen.* 7, c. 11, No woollen cloth shall be exported, till it be barbed, rowed, and shorn, on pain of forfeiting the same, half to the king, and half to him that will sue.

Winding of
wool.

By stat. 8 *Hen.* 6, c. 22, No man shall make any inwinding within the fleece at the rolling up of his wool; nor put in the same, locks, pelt-wool, tar, stones, sand, earth, grafs, nor any dirt; and if he do, the party grieved may bring his action at common law of trespass and deceit.

By stat. 23 *Hen.* 8, c. 17, No person shall wind any fleece not sufficiently washed, except in counties where they do not use to wash sheep; nor shall wind within any fleece, clay, lead, stones, sand, tails, deceitful locks, cot, cals, comber, lamb's wool, or any other thing whereby the fleece may be the more weighty, to the deceit and loss of the buyer, (except where fleeces are sold by number, and not by weight) on pain that the seller shall forfeit 6*d.* a fleece, half to the king, and half to him that shall sue.

Overseers of
cloth.

By stat. 3 & 4 *Ed.* 6, c. 2, *sect.* 9; 39 *Eliz.* c. 20, *f.* 4, and 43 *Eliz.* c. 10, *sect.* 7, In every parish and hamlet where cloths are made, two justices (and in corporations, the mayor, together with one justice of the shire next adjoining) shall once a year, or oftener, call before them, by precept or otherwise, 2, 4, 6, 8, or more, of the most honest, discreet, and able men of such place, and appoint them overseers for a year, or six months, or shorter time; and shall take them sworn, and bound in recognizance of 40*l.* each, to do their best endeavour by all lawful ways and means to see the statutes observed relating to the regulation of cloth.

Overseers to
search, &c.

And by said act 39 *Eliz.* c. 20, *sect.* 4, 5, Any person, without reasonable excuse, refusing to be overseer, shall forfeit 5*l.* half to the king, and half to such justices, and to remain in ward of the sheriff, till paid or secured. And the said overseers, or two of them, shall once a month at least, or so often as need shall require, go into the houses and rooms where the cloth shall be, and search, and try the same, by water, weight, or any other way. And if any shall withhold cloth, or deny search, he shall on conviction thereof at the sessions, forfeit for the first offence, 10*l.* for the second 20*l.* for the third, being convicted by verdict and two witnesses, he shall stand upon the pillory in the next market town.

Exportation
of wool, &c.
prohibited.

By stat. 12 *Car.* 2, *cap.* 32, *sect.* 2, No person shall export out of *England, Wales, or Berwick*, or from the isles of *Jersey or Guernsey*, with *Sark* and

and *Alderney*, being under the government of *Guernsey*, or out of *Ireland*, into any parts out of the dominions aforesaid, any sheep or wool of the breed or growth of *England* or *Ireland*, or dominion aforesaid, or any wool-fells, mortlings or shorlings, or any yarn of wool, or any wool-flocks, fullers earth, or fulling clay; nor shall pack or load upon any horse, cart, or carriage, or lay on board any ship or vessel, any such sheep, wool, &c. to the intent to export the same.

Sect. 3. “No wool, wool-fells, mortlings, shorlings, yarn of wool, wool-flocks, fullers-earth or fulling-clay, shall be exported out of *England*, *Wales*, or *Ireland*, into the isles of *Jersey* or *Guernsey*, *Sark* or *Alderney*, except as in this act shall be appointed.

Sect. 4. “All offences aforesaid shall be subject to the penalties following, *viz.* the sheep, wools, &c. shall be forfeited, and every offender shall forfeit twenty shillings for every sheep, and three shillings for every pound of wool, wool-fells, mortlings, shorlings, yarn of wool, wool-flocks, fullers-earth or fulling-clay; and the owners of the vessels knowing such offence, shall forfeit all their interest in the ships; and the master and mariners knowing such offence, and willingly assisting thereunto, shall forfeit all their goods, and have imprisonment three months; one moiety of which penalties shall be to the king, and the other moiety to him that will sue for the same in any of his majesty’s courts of record, or before the justices of assize, or in the quarter-sessions of the peace. Penalties.

Sect. 5. “If any person shall transport any sheep, wool, &c. contrary to this act, and be thereof convicted, he shall be disabled to require any debt or account of any factor or others, for any debt or estate belonging to such offender. Provided that this act shall not take away any greater penalties inflicted by any former act.

Sect. 6. “Every offence contrary to this act may be inquired of, heard and determined, in the county where such sheep, wool, &c. shall be pack’d or laid a-board, or in the county where such offenders shall be apprehended for such offence. Offenders may be tried where apprehended.

Sect. 7. “No person shall be impeached for any offence aforesaid, unless such person be prosecuted within one year next ensuing such offence.

Sect. 8. “It shall be lawful for any person to seize to his own use, and to the use of the king, all such sheep, wool, &c. as he shall discover to be laid aboard in any ship or boat, or to be laid on shore near the sea, or any navigable river, to the intent to be exported; and such persons as shall seize any such sheep, wool, &c. shall have the moiety thereof. Any person may sue.

Sect. 9. “Such person as shall make any such seizure, shall not be admitted to give evidence upon his oath against any person indicted by virtue of this act.

Sect. 10. “Every ship or boat, whereof any alien born, or any natural born subjects not inhabiting within the realm, shall be owner, or part owner, and where any sheep, wool, &c. shall be shipped contrary to this act, shall be forfeited to the king. Ships of aliens forfeited.

Sect. 11. “This act shall not extend to any lamb skin ready dressed, fit for linings. Exceptions.

Woollen Manufacture.

Sect. 12. " This act shall not extend to the transporting of any such woolels or pelts, with wool upon them, or to any beds stuffed with flocks, which shall be employed in any ship for necessary use, about the ordnance or other thing, or for the use of the persons in such ship, and which shall not be sold in foreign parts; nor to the exporting of any wether sheep, or of the wool growing upon such, for the food of the company or passengers.

Sect. 13. " This act shall not extend to any such wool to be exported from the port of *Southampton* unto the isles of *Jersey* and *Guernsey*, for the use of the inhabitants of *Jersey* and *Guernsey*, so as that such persons that shall ship such wool, do, before the shipping, deliver unto the customer, controller, surveyor or searcher of the port of *Southampton*, a writing under the seal of the governor of the said isles, which shall express that the party is authorized to export so much wool, expressing the number of the tods, to the same isle, to be used in one of the same isles, or in some of the members of the same; and that such party hath entered into bond, to his majesty's use, for landing the wool in that isle. And the quantity of wool to be exported into the the said isles in one year, to begin from the first of *January*, may not exceed the quantity hereunder specified, viz. to *Jersey* two thousand tods of unkembled wool, and to *Guernsey* one thousand tods of unkembled wool, and to *Alderney* two hundred tods, and to *Sark* one hundred tods, every tod not exceeding thirty-two pounds.

Quantity of
wool to be
carried to *Jersey*, &c.

Sect. 14. " The governor of *Jersey* shall not make to any person any writing to authorize such person to fetch in one year any greater quantity of wool than two thousand tods; and the governor of *Guernsey* shall not authorize any person to export into *Guernsey*, with *Alderney* and *Sark*, in any one year, any greater quantity of wool than one thousand tods for *Guernsey*, two hundred tods for *Alderney*, and one hundred tods for *Sark*; and the customer of the port of *Southampton* shall keep a true account of the wools so by him permitted to be loaden, and shall not permit any greater quantity to be loaden than by this act is prescribed, in any one year, to the said islands, upon the penalty of forfeiture of his place, and one hundred pounds to him that will sue for the same in any court of record; and if any of the governors aforesaid, or their deputies, shall grant licences for exporting into the said isles any greater quantity of such wool than is before limited, the governors of such of the said isles shall forfeit to the king twenty pounds for every every tod.

Sect. 15. " The governors aforesaid, their clerks or servants, for the granting of such licence, and for the entering a remembrance of the same, may take twelve-pence and no more, upon pain of forfeiting to the party grieved five shillings for every penny which shall be taken above, to be recovered in any court.

Confirmed by 13 *Car. 2, cap. 14.*

Pressing wool,
&c. prohibi-
ted.

STAT. 13 & 14 Car. 2, cap. 18, sect. 7, No person shall press together, with screws or other engines, into any sack, pack, bag, or other wrapper, or shall put or pack any wool, or yarn of wool, into any hoghead, chest, or other cask or vessel, or shall carry or lay near the coast of the sea, or
any

any navigable river, or any place near adjoining, any wool, wool stocks, or yarn of wool, with intention to export the same out of *England, Ireland, Berwick, or Wales*, into foreign parts, under penalty of forfeiture of all such wool, &c. or the value thereof.

Señ. 9. “ No packs, sacks, bags, or cask of any wool, wool fells, ^{Wool, &c.} mortlings, shorlings, yarn of wool, wool-stocks, fullers earth, fulling clay, ^{not to be car-} or tobacco-pipe clay, shall be loaden on any horse or carriage, nor con- ^{ried in the} veyed by land, within *England, or Ireland*, but in the day time, and at ^{night.} seasonable hours, *viz.* from the 1st of *March* to the 29th of *September* yearly, between four in the morning and eight in the evening, and from the 29th of *September* to the 1st of *March*, between seven in the morning and five in the evening, under penalty of forfeiture of such goods, or the value thereof; one moiety of all which forfeitures to be to the king, and the other moiety to him that will sue for the same in any court of record.

Señ. 10. “ This act shall not make void any clauses in 12 *Car. 2, c. 32*, or prohibit the loading on board of any ship, any wether sheep, wool, wool stocks, or other goods, that by the aforesaid act is permitted, for the use or provision of such ship.

Señ. 12. “ Justices of assize, justices of gaol-delivery, and justices of ^{Who shall in-} peace, shall inquire of the premisses in their quarter sessions, and hear and ^{quire of of-} determine the same; and all mayors, bailiffs, and other head officers, shall ^{fences.} inquire of offences within this act, and hear and determine the same.

STAT. 13 & 14 Car. 2, c. 19, s. 1. “ No foreign wool-cards, or fo- ^{Foreign wool} reign card wire, or iron wire for making of wool-cards, shall be imported ^{cards, &c.} into *England or Wales*, or used within the same; nor shall any card-wire ^{not to be im-} taken out of old cards be put into new leather and new card-boards, nor ^{ported.} any such wool-cards made thereof be put to sale, upon the penalties following, *viz.* every person who shall import foreign wool-cards, or foreign card wire, or iron wire, for making of wool-cards, or make any wool-cards of such old card-wire as aforesaid, or put the same to sale, shall forfeit the wool-cards and wire, or the value thereof, one half to the king, and the other half to such person who shall first seize or sue for the same in any of his majesty's courts at *Westminster*, or within the county, city, borough, or town corporate where such offence shall be committed.

Stat. 30 Car. 2, c. 3, señ. 3. “ (Which is required to be given in charge ^{For burying} at the assizes and sessions.) No corpse of any person (except those who shall ^{in woollen.} die of the plague) shall be buried in any shirt, shift, sheet, or shroud, or any thing whatsoever made or mingled with flax, hemp, silk, hair, gold, or silver, or in any stuff or thing, other than what is made of sheep's wool only, or be put into any coffin lined or faced with any sort of cloth or stuff, or any other thing whatsoever, that is made of any material but sheep's wool only.

Señ. 4, 7. “ And the ministers shall take an exact account, and keep a register book, to be provided at the charge of the parish, and make a true entry therein of all persons buried in their respective parishes or precincts, or in such common burial places as their respective parishioners are usually buried.

Señ.

Registers and
affidavits of
burials.

Stat. 4, 5. "Within eight days after the interment, some relation of the party deceased, or other credible person, shall cause an affidavit in writing to be made under the hands and seals of two or more credible witnesses, setting forth that such deceased person was not put in, wrapt, or wound up, or buried, in any shirt, shift, sheet, or shroud, made or mingled with flax, hemp, silk, hair, gold or silver, or other than what is made of sheep's wool only, or in any coffin lined or faced with any cloth, stuff, or any other thing whatsoever, made or mingled with flax, hemp, silk, hair, gold, or silver, or any other material but sheep's wool only: and shall bring the same, and make oath thereof, before the mayor, or a justice of the peace, or masters of chancery (and if no justice shall reside or be to be found in the parish where the party is interred, then to any parson, vicar, or curate, in any other parish within the county by 32 *Car.* 2, c. 1.)

Stat. 4, 7. "And shall within eight days bring the same so signed and attested, to the minister; who shall enter the same in the register.

Stat. 4. "And if no relation of the party buried, or other person, shall bring such affidavit as aforesaid, then the goods and chattels of the party deceased shall be liable to the forfeiture of five pounds, to be levied by distress, by warrant of the chief magistrate in any town corporate, or of any justice of the peace; or in default thereof, by like distress of the goods of the person in whose house the party died; or of any that had a hand in putting such person into any shirt, shift, sheet, shroud, or coffin, or did order or dispose the doing thereof; and in case such person were a servant, and died in the family of his or her master or mistress, the same shall be levied on the goods of such master or mistress; and if such person died in the family of his or her father or mother, then the same shall be levied on the goods of his or her father or mother: Which said forfeiture shall be levied, paid, and allowed out of the estate of the said deceased person, before any statute, judgment, debt, legacy, or other duty whatsoever.

Stat. 5, 6. "And where no affidavit shall be brought in eight days as aforesaid, to the minister where the party was buried, he shall forthwith give or cause notice thereof to be given in writing under his hand, to the churchwardens or overseers; on pain of five pounds with full costs, (provided the suit be commenced in six months); one fourth to the king, two fourths to the poor where such person offending dwells, and one fourth to him that shall inform and sue.

Stat. 7. "And where no such affidavit shall be brought to him within such time, he shall enter a memorial thereof, in the said registry, against the name of the party interred, and of the time when he certified the same to the church-wardens or overseers.

Stat. 8. "The said church-wardens or overseers shall, within eight days after such notice (on like pain as the minister), repair to the chief magistrate, if such party was buried in a town corporate, or else to a justice of the peace: which said justice or magistrate, on certificate from such minister, shall (on the like pain) forthwith grant a warrant for the levying of the said forfeiture

forfeiture on the goods of the parties before-mentioned, rendering the overplus; all reasonable charges being first deducted; half of which shall be to the poor, and half to the informer.

Sect. 8. “ And when the overseers shall account, they shall give an account of the name and quality of every person interred within their parish from the time of their former account, and of such certificate as came to their hands from such minister, and of their levying the penalties, and of their disposal thereof; on pain of five pounds to be levied by distress, by warrant of the justices, or two of them, to whom they shall account. And no overseers account shall be allowed, until they shall have therein accounted for the burials as aforesaid. Overseers to give account.

STAT. 1 Will. & Mar. st. 1, cap. 32, sect. 2. Every owner of wool, or their agents, that shall carry wool to any place on the sea-coasts, with intent to convey the same to any other port within *England*, from whence the same may be transported into foreign parts, shall first cause an entry to be made of the wool at the port from whence the same shall be intended to be conveyed, containing the weight, marks, and numbers of the same, before they load or carry away any of the wool, within five miles of any such place on the sea-coasts; and if any wool shall be carrying towards the sea, without being first entered, the wool, as also the horses or carriages, shall be forfeited, and the persons carrying or abetting the same, shall forfeit as by the laws against the exportation of wool. Wool that is removed to be entered and registered.

Sect. 3. “ The foregoing clause shall not extend to the hindering any person from carrying his wool from the place of shearing on horses, or by carts and waggons to his dwelling-house, though the same be within five miles of the sea, so as such person within ten days after the shearing, and before he remove the same from the place where it was first carried, do under his hand certify, to the officer of the customs in the next port, the quantity of the wool, *viz.* the number of fleeces, and where the same is housed, and that such person do not remove the wool without first certifying the officer of such port, under his hand, of his intention to remove the same, three days before; and the officers are to receive and keep such certificates, and make a register of them. But in case any such person shall neglect to send such certificates, or shall remove any wool before such certificate delivered, such person shall have no benefit by this proviso.

Sect. 4. “ All cocquets for carrying wool from any port within *England*, *Wales*, or *Berwick*, shall be written upon paper, and not parchment, and signed by three of the chief officers; and all certificates of landing the same in any other of the said ports, or from *Ireland*, shall be signed in like manner, and all such wool, both at shipping and landing, shall be weighed in the presence of the officers giving such cocquets and certificates, and the exact weights, marks and numbers, shall be expressed in both cocquet and certificate.

Sect. 8. “ If any owner of any ship, or any master or mariner, knowing of the exportation of any sheeps wool, wool fells, mortlings, shorlings, yarn of wool, wool-flocks, fullers earth, fulling clay, or tobacco pipe clay, contrary to the acts, shall, within three months after the knowledge Persons discovering exempted.

thereof, or after his return into *England, Ireland, Berwick, or Wales*, give the first information before any of the barons of the exchequer in *England or Ireland*, or before the head-officer of any port where he shall first arrive, upon oath, of the number and quantity of such sheeps wool, wool-fels, &c. so exported, and by whom, where, and in what ship, and shall be ready, upon warning by process, to justify the same; such owners, master and mariners, shall not be liable to any the penalties.

Sect. 10. "If any action shall be prosecuted against any person for what he shall do in pursuance of this act, such persons sued may file common bail, or enter a common appearance, and plead the general issue, not guilty; and if the plaintiff become nonsuit, &c. the defendant shall recover treble costs and damages.

Register of wool.

Sect. 11. "A register shall be kept at the custom-house, *London*, of all wool imported from *Ireland*, and also of what wool shall be sent from one port to another, the weights and numbers, the ship, master's name, owner's name, and to whom consigned. This act to continue three years."

Continued indefinitely by 7 Will. 3, cap. 28, which is continued indefinitely by 9 Will. 3, cap. 40.

Woollen manufactures may be exported. Quantity of wool to be carried to Jersey, &c.

Sect. 12. "It shall be lawful for any person to buy cloth, stuffs, stockings, or other manufacture of wool, made in *England, Wales, or Berwick*, and the same freely to export beyond the seas, paying the customs.

Sect. 14. "It shall be lawful to transport from the port of *Southampton* only, for the use of the inhabitants of the islands of *Guernsey, Jersey, Alderney*, and *Sarke*, and of the woollen manufactures there, one thousand tods of unkembed wool for *Guernsey*, two thousand tods for *Jersey*, two hundred for *Alderney*, and one hundred tods for *Sarke*, more than by the act 12 *Car. 2, cap. 32*, is provided according to the same rules, &c. as in the said act; and on the further penalty of twenty pounds for every tod of wool, and forfeiture of the wool (one half to his majesty, one quarter to the informer, and the other quarter to the poor of the said islands) in case any person shall attempt to transport any of the said wool from the said islands; and also every person so offending shall be incapable of having any grant of any wool from the port of *Southampton*, nor shall ever hereafter have any warrant for that purpose, the penalties to be recovered by such person as shall sue.

Ports of import from Ireland.

STAT. 7 & 8 Will. 3, cap. 28, sect. 5. "It shall be lawful for any person from the places in act 1 *W. & M. c. 32*, limited to import into *England* from *Ireland* any quantities of wool to the ports hereafter mentioned, viz. *Whitehaven, Liverpool, Chester, Bristol, Bridgewater, Minehead, Barnstaple*, and *Bideford*, and to no other.

Wool not to be carried in the night, nor exported.

Sect. 8. "No wool, or any of the commodities aforesaid, shall be loaden on any horse or carriage, or conveyed by land within five miles of the sea-coast, but between sun-rising and sun-setting, under the forfeiture of the commodities, and of the horses and carriages; and no ship shall export the same under forfeiture of the commodities and vessel, and treble the value, with treble costs; and the inhabitants of the hundred, port or place exempt, next adjoining to the sea-coasts, out of or through which any wool,

Penalty on the hundred.

or.

or other of the commodities aforesaid, shall be so carried or exported, shall forfeit twenty pounds if the wool be under the value of ten pounds, but, if it be of greater, then treble the value thereof so exported, as also treble costs; all which penalties are to be recovered by them that shall sue for the same in any of his majesty's courts at *Westminster*.

Sect. 9. "The execution for the informer may be had against two or more of the inhabitants; and it shall be lawful (upon complaint made by the parties so charged) for the justices of the peace at their quarter-sessions to assess all the towns and hamlets in the hundred, port, or place, in the same manner as any hundred ought to be charged in case of robbery, and the justices of the county or place shall at their quarter-sessions levy the penalties upon the said inhabitants, in the same manner as if there had been judgment at law against the hundred, &c.

Sect. 10. "All persons who shall be assisting in carrying or exporting any of the said commodities out of this realm, (being convicted) shall suffer three years imprisonment; and the owner of the wool, &c. and every person assisting in carrying or exporting of them, shall answer treble the value of such penalties which such inhabitants shall be so charged with, as also treble costs, which shall be recovered by action in any of his majesty's courts at *Westminster*, in the name of the clerk of the peace, without naming the name of the clerk of the peace, and notwithstanding the death or removal of any such clerk of the peace, such suit shall be prosecuted to judgment and execution. Penalty for assisting to export.

Sect. 11. "Such actions and informations shall be tried in any of his majesty's courts of record, by a jury of any other county than that wherein the fact shall be committed; and the first three persons who have been assisting in carrying out or exportation of wool, or any other of the commodities, that shall inform thereof any justice of peace, whereby the penalties may be inflicted, the parties so discovering (not being owner of the wool, &c.) shall not suffer any of the penalties. Trial in any county.

Sect. 12. "If any action be brought against any justice of peace, or other person employed by them, for any thing done by reason of this act, the action shall be laid in the proper county, and the defendants may plead the general issue; and if the plaintiff, &c. the defendants shall have treble costs, and every action by virtue of this act shall be commenced within one year after the fact.

Sect. 13. "If any person intitled to the penalties shall compound with any hundred for any lesser sum, it shall at any time be lawful for any other person to sue for the same; and the person compounding shall suffer five years imprisonment. No composition with the hundred.

Sect. 14. "For preventing the exportation of wool, and correspondence with *France*, the commissioners for executing the office of lord high admiral, shall appoint one ship of the fifth rate, and two ships of the sixth rate, and four armed sloops, constantly to cruise from off the north fore-land to the ile of *Wight*, with orders for seizing all vessels which shall export wool, or carry or bring any prohibited goods or suspected persons." Ships to cruise.

Continued indefinitely by the following act.

Fullers earth not to be exported. STAT. 9 & 10 W. 3, c. 40, *sect.* 2. "No fullers earth or scouring clay shall be exported out of this kingdom, *Wales* or *Berwick*, into *Ireland*, or any other foreign parts; but the exporters, being convicted, shall be liable to the forfeitures of one shilling for every pound.

Wool in *Kent* and *Sussex* to be accounted for. *Sect.* 3. "All owners of wool thorn, housed or lodged, within ten miles of the sea side within *Kent* and *Sussex*, shall be obliged to give an account in writing, within three days after the shearing, of their number of fleeces, and where housed, to the next adjacent port, or officer of his majesty's customs, and the like notice, before they remove any part thereof, of the number of fleeces and weight, and the name and abode of the person to whom it is disposed, and the place to which it is to be carried, and to take a certificate from the officer who first entered the same, upon the penalty of forfeiting all such wool, and the owners also to be liable to the further penalties of three shillings for every pound, as if the same had been transported; which account the officers are to take gratis, and to give such certificates without delay, and shall therein specify the name of the owner and buyers, and limit it to such times and places to be removed; for which service the officers shall take six-pence for each certificate.

Directions for buying and selling wool in *Kent* and *Sussex*. *Sect.* 4. "No person residing within fifteen miles of the sea, in *Kent* and *Sussex*, shall buy any wool before they enter into bond to the king, with sureties, that all the wool they buy shall not be sold by them to any person within fifteen miles of the sea: and in case any wool be found carried towards the sea side, in the counties aforesaid, unless such wool be first entered and security given, the same shall be forfeited, and the persons offending therein shall also forfeit three shillings for every pound weight.

Wool not to be removed near the sea. *Sect.* 5. "No wool removed, from the place where it was first housed, ten miles, as aforesaid, shall be lodged within fifteen miles of the sea in the counties aforesaid, upon pain of forfeiting all such wool, if found; but, if carried away, the owners to forfeit for every pound weight three shillings.

Wool within 15 miles of the sea. *Sect.* 6. "Every person that shall lay any wool within fifteen miles of the sea, and not entered, all such wool shall be forfeited; and every person, laying claim to the same, shall give security in his majesty's Exchequer (if cast upon trial) to pay treble costs, over and above the penalties.

Sect. 7. "If any action be brought against any person employed in the execution of this act, for any thing done by virtue of this act, the defendant may plead the general issue; and if the plaintiff be nonsuit, &c. the defendant shall have treble costs.

Distribution of penalties. *Sect.* 8. "All the penalties before-mentioned shall be distributed, one third part to his majesty, and the other two thirds to such persons as shall seize or sue for the same in any of his majesty's courts at *Westminster*.

Prosecution in three years. *Sect.* 9. "It shall be lawful for his majesty to cause persons guilty of transporting wool, woolfels, fullers earth, or scouring clay, to be prosecuted at any time within three years after the offence.

Wool, woolfels, &c. not to be exported abroad from *Ireland*. STAT. 10 & 11 Will. 3, cap. 10, *sect.* 1. "No person shall export from *Ireland* into any places, other than the ports within *England* or *Wales*, any wool, woolfels, shortlings, mortlings, woolflocks, worsted, bay, or wollen yarn,

yarn, cloth, serge, bays, kerseys, fays, frizes, druggets, cloth-ferges, shalloons, or any other drapery, stuffs, or woollen manufactures, made up or mixed with wool or woolllocks, or shall load upon any horse or carriage, or lay on board any ship, in any place of *Ireland*, any such wool, &c. to the intent to export the same, except as aforesaid.

Sect. 2. "All offenders aforesaid shall be subject to the penalties following: *viz.* the wool, &c. shall be forfeited: and the offenders shall forfeit five hundred pounds, and every ship or bottom wherein any of the said commodities shall be shipped or laid on board, shall be forfeited; and the masters and mariners, or any porters or other persons, knowing such offence, and assisting therein, shall forfeit forty pounds: of which one moiety shall be to him that shall sue in any of his majesty's courts of record in *England* or *Ireland*, and the other moiety to the encouragement of setting up the linen manufactures in *Ireland*, to be disposed of by the court of Exchequer there.

Sect. 3. "No acquittal, nor any suit (unless the offender be thereupon convicted) in *Ireland*, for any offence provided against in this act, shall be pleaded in bar or delay of any suit or prosecution in *England*.

Sect. 4. "It shall be lawful for any person to seize and convey to his majesty's next warehouse all such wool, &c. as he shall discover to be laid on board any ship, or to be carried or laid on shore near the sea, or any navigable river, to the intent to be exported out of *Ireland*, contrary to this act, or to be laden upon any horse or carriage to the intent to be exported contrary to the intent hereof; and it shall be lawful for any person to seize every such ship wherein any of the said commodities shall be shipped contrary to this act.

Sect. 5. "For every ship which shall sail from *Ireland* in order to export any of the commodities aforesaid to this kingdom, bond shall be given by two known inhabitants of or near the place, to the chief officers of the customs belonging to the port in *Ireland*, in double the value of the goods, before the ship shall be permitted to lade any of the commodities aforesaid, with condition that if the ship shall take on board any of the said goods in *Ireland*, all the goods shall be brought by the same ship to some port in *England* or *Wales*, and there shall unlade the same, and pay the duties thereof, the dangers of the seas excepted; and every ship which shall lade any of the said goods until such bond be given, shall be forfeited as aforesaid.

Sect. 6. "A register shall be kept at the Custom-house in *London* of all the said goods imported from *Ireland* into any of the ports within this kingdom or *Wales*, with the particular qualities and quantities thereof, the master and owner's name, and to whom consigned.

Sect. 7. "All cocquets and warrants for carrying the said goods from *Ireland* to any port in this kingdom shall be written upon paper, and not parchment, and signed by three of the chief officers of such port, and all certificates of such landing the same shall be signed in like manner; and all the goods aforesaid, both at shipping and landing, shall be examined by the surveyor or searcher, or landwaiter attending the shipping or discharge; and:

and the quantities and qualities, marks and numbers, shall be indorsed upon the cocquet, and upon the warrant for landing the same, and also upon the certificates given for discharging the bonds taken in *Ireland*.

Wool, &c.
exported from
Ireland to be
accounted for. *Sec.* 8. "The commissioners of the revenue, or farmers of the customs or revenue, of *Ireland*, shall once every six months, or within thirty days after the end thereof, transmit unto the commissioners or farmers of his majesty's customs in *England*, an account of all such goods exported from *Ireland*, the qualities and quantities thereof, and duplicates of the bonds taken for lading the same, and by whom and in what ships exported, and to what port in *England* or *Wales* consigned, and the names of the persons signing the certificates of the landing the same, and the date of the certificates, and where the same were laden, and the qualities and quantities, marks and numbers, contained in the certificates.

Sec. 9. "All such certificates shall be written upon paper, and not parchment, and the quantities and qualities, marks and numbers, shall not be obliterated or interlined.

Ports of ex-
port in *Ire-*
land, and
import in
England. *Sec.* 10. "All such goods exported from *Ireland* into this kingdom or *Wales*, shall be shipped off at the ports of *Dublin*, *Waterford*, *Toughal*, *Kingsale*, *Cork*, and *Drogheda*, and from no other port; nor shall be imported into any parts of *England* or *Wales*, other than *Bideford*, *Barnstable*, *Minehead*, *Bridgewater*, *Bristol*, *Milford-haven*, *Chester*, and *Liverpool*.

Penalties. *Sec.* 11. "If any commissioner or farmer of the revenue of *Ireland*, or officer employed under them, shall suffer to be taken any entry outward, or sign any cocquet, warrant, or sufferance for the shipping any such goods, except as aforesaid, or shall willingly permit the same to be done, such commissioner, &c. signing such cocquet, &c. or passing such entry, or conniving thereat, or who shall neglect to perform all other duties required by this act, shall forfeit his office, and five hundred pounds, to be recovered as aforesaid.

Offender tried
when appre-
hended. *Sec.* 12. "Every offence contrary to this act may be inquired of, heard and determined, in the county where any such goods shall be laden or put on board, or in the county, either in *England* or *Ireland*, where such offender shall be apprehended for such offence, or where any of the goods or the ship shall be seized or brought in, and the trial shall be in such manner as if the offence had been done in the same county.

Sec. 13. If any action be commenced against any person for what he shall do in pursuance of this act, such person may file common bill, or enter a common appearance, and plead the general issue not guilty; and if the plaintiff become nonsuit, &c. shall recover treble costs and damages.

Directions for
importation
from *Ireland*. *Sec.* 14. "It shall be lawful to import from the ports of *Dublin*, *Waterford*, *Toughal*, *Kingsale*, *Cork*, and *Drogheda*, any wool, &c. into such ports of this kingdom as aforesaid, so as notice be first given to the commissioners of his majesty's customs in this kingdom, or to the customer or collector in the port to which the same is to be brought, of the quantity, quality, and package, with the marks and numbers thereof, the name of the ship and master, and the port into which they are to be imported, and so as bond be first entered into to the use of his majesty, with one or more sureties

sureties in treble the value of the goods, that the same shall (dangers of the seas excepted) be landed accordingly, and so as a licence be first taken under the hands of the commissioners of the customs, or from the customor or collector where such bond is given for the landing thereof; which licence they are to grant without fee.

Sect. 15. "The penalties of the bonds to be given in *Ireland* for any of the commodities aforesaid to be brought into this kingdom, shall not be granted over; and all such granted shall be void.

Sect. 16. "The commissioners for executing the office of high admiral shall appoint two ships of the fifth rate, and two of the sixth rate, and eight armed sloops, constantly to cruize on the coasts of *England* and *Ireland*, particularly between the north of *Ireland* and *Scotland*, with orders to seize all ships which shall export wool with intent to carry it into foreign parts; and the commissioners aforesaid shall send a list of such ships and sloops, and the names of the commanders, with copies of their instructions, to the commissioners of the customs in *London*, within ten days after such orders given. Ships to cruize.

Sect. 17. "All wool, ships or boats, so seized, shall be forfeited, and such wool shall be lodged in the king's warehouse in such port where it shall be seized, or into which it shall be brought, and, being condemned, shall be exposed publicly to sale, after twenty-one days notice being given in writing at the Custom-house of the port, and on the Royal Exchange of *London*, by inch of candle to the best bidder; and all ships, that shall be condemned as aforesaid, shall be exposed to sale in like manner; and one fourth-part of the produce of the wool, ships and boats, shall be to the commander; one other fourth-part to the mariners, to be equally divided by the collectors of the port, or such persons as shall be authorized to pay the same; and the other fourth part to his majesty, after a deduction made out of the last fourth-part of all the charges of prosecution. Ships and goods seized to be sold and distributed.

Sect. 18. "Every commander of such ship or sloop neglecting his duty, or compounding for any wool, ship or boat, or conniving at the exportation of wool, shall forfeit all pay due, and suffer six months imprisonment, and be incapable of serving his majesty in any office in the navy. Penalties.

Sect. 19. "No wool of the product or manufacture of any of the *English* plantations in *America* shall be loaden on board any ship in any of the *English* plantations; as likewise no such wool, being of the product or manufacture of the *English* plantations in *America*, shall be loaden upon any horse or carriage, to the intent to be exported or conveyed out of the said plantations to any other of the said plantations, or to any other place, upon the like penalties upon every offender as are provided by this act for the like offences in *Ireland*; and all governors of the plantations, as also all officers in the revenue there, are required to take care that this act be put in execution. Plantation wool not to be exported.

Sect. 20. "Persons who shall be guilty of any offence contrary to any act of parliament made for preventing the exportation of wool, may be prosecuted in any of his majesty's courts at *Westminster*, and a capias shall issue the first process, specifying the sum of the penalty; and such person shall Prosecution at Westminster.

shall give good bail, by natural-born subjects or denizens, to appear in the court at the return of such writ, and shall likewise give bail by such persons as aforesaid in court, to answer the penalties in case they be convicted, or to yield their bodies to prison."

Judgment by default. STAT. 4 *Geo. 1, cap. 11, sect. 6.* "If any person shall be in prison, for want of bail, for unlawful exportation of wool, or woolfels, and shall refuse to appear or plead to a declaration or information delivered to such person, or to the gaoler or turnkey, by the space of one term, judgment shall be entered against him by default; and in case judgment be obtained against any such person, and he shall not pay the sum recovered within three months after entering up of such judgment, the court shall by order cause such offender to be transported, in the same manner as felons, for seven years; and if such offender shall return into *Great-Britain* or *Ireland* before the expiration of the seven years, he shall suffer as a felon without benefit of clergy."

Woolfels, &c. carried coast-wise. STAT. 5 *Geo. 1, cap. 11, sect. 14.* "The like provision made for preventing the exportation of wool in 1 *Will. & Mar. stat. 1, cap. 32*, is directed to extend to woolfels, mortlings, shorlings, yarn or wool, woolstocks, fullers earth, fulling clay, and tobacco-pipe clay, carried coast-wise.

SECT. 21. "All such wool, and other the commodities mentioned in 10 & 11 *Will. 3, cap. 10*, which shall be carried or laid on shore near the sea, or any navigable river, to the intent to be exported out of *Ireland*, contrary to this act, shall be forfeited, and the offenders shall be liable to like penalties as persons by that act are subject to for exporting of wool," &c.

Penalties of deceitful dyeing black. STAT. 13 *Geo. 1, c. 24, f. 1.* "Whereas divers persons within this realm, using the mystery or craft of dyers, have of late used and exercised false and deceitful ways in dyeing bays and other woollen goods black, without using woad, indigo, or mather, and for passing off such goods as true mathered blacks (though falsely dyed as aforesaid) the corner only thereof hath been dyed red, and a red rose, or other mark, for a true dyed mather black, tyed up at such corner, when the rest of the said bays and woollen goods, or great part thereof, are falsely dyed without woad, indigo, or mather, as aforesaid, and such or the like deceitful practices have been and are used in dyeing of black cloths, bays, and other woollen goods, to imitate and resemble true woaded blacks, without using any woad or indigo in the dyeing thereof, and a blue rose, or other mark for a true woaded black hath been fixed to the corner thereof, to deceive the buyer; and whereas great deceit hath been practised in the dyeing of blues with logwood, instead of woad and indigo, or mixed therewith, which frauds and abuses tend to the great deceit and hurt of his majesty's subjects at home, and to the discredit and slander, as well of the merchants as of the dyers of this realm, and the woollen manufactures of this kingdom are thereby

hereby greatly disparaged in foreign parts: for redress in the premises, be it enacted, &c. That if any person or persons whatsoever shall, within that part of *Great Britain* called *England*, *Wales*, and *Berwick upon Tweed*, dye, or cause to be dyed black, or as or for black, any bays, or other woollen goods, as or for mather blacks, the same not being dyed throughout with woad, indigo, and mather only, without any other ingredient, or mixture, giving tincture or colour, or shall dye or cause to be dyed black, or as or for black, any cloths, long ells, bays, or other woollen goods, as or for woaded blacks, the same not being woaded throughout, every person offending in the premises shall forfeit and pay for such deceitful and false mathered blacks as followeth (that is to say),

For every long *Backing* bays, containing seventy yards, or upwards, forty-four shillings.

For every *Colchester* bays, or short bays, containing thirty-five yards or upwards, the sum of twenty-two shillings, and so in proportion for any greater or less quantity of any such bays, or of any other woollen goods falsely or deceitfully mathered, or pretended to be mathered as aforesaid.

For every cloth falsely and deceitfully dyed black, without being woaded throughout, containing forty-four yards, or more, the sum of forty shillings.

For every piece of bays falsely and deceitfully dyed, as aforesaid, containing seventy yards or upwards, thirty shillings.

For every *Colchester* or short bays, containing thirty-five yards or upwards, twelve shillings.

For every perpetuana, or stuff falsely and deceitfully dyed as aforesaid, the sum of four shillings, and so in proportion for any other woollen goods falsely and deceitfully dyed, as and for woaded blacks as aforesaid.

Sec. 2. "And all woollen goods and manufactures, which shall be truly mathered black, according to the directions of this act, shall be marked with a red rose and a blue rose, and all woollen goods and manufactures which shall be truly woaded black throughout, according to the directions of this act, shall be marked with a blue rose only; and if any person or persons whatsoever shall counterfeit or forge, or cause to be counterfeited or forged, any of the said marks, or shall dye, stain, imprint, or affix any such mark or marks to any of the woollen goods or manufactures aforesaid, falsely and deceitfully dyed as or for mather or woaded blacks as aforesaid; every such offender shall, for every such offence, forfeit and pay four pounds for every piece of goods to which the said mark or marks shall be affixed as aforesaid. Marks.

Sec. 3. "And if any person or persons whatsoever shall use, or cause to be used, any logwood in dying of blue, every such person shall, for every such offence, forfeit and pay the sum of forty shillings for every piece of cloth so dyed, containing in length forty-four yards or more, and twenty-two shillings for every long piece of *Backing* bays, containing in length twenty yards or more, and twelve shillings for every *Colchester* or short bays, containing in length thirty-five yards or more, and four shillings for every perpetuana, or stuff, containing in length twenty-four yards or more, Of using log-wood in dying blue.

and so in proportion for all other sorts of woollen goods dyed blue with logwood, contrary to this act.

Searchers.

Secl. 4. "And for more effectually preventing the frauds and abuses aforesaid, and for better discovery thereof, be it further enacted, &c. That all persons occupying the trade, art, or mystery of dying any manner of woollen cloth, stuffs, or woollen manufactures whatsoever, within the city of *London*, or the suburbs thereof, or within the limits of the weekly bills of mortality, or within ten miles compass of the same city, shall be subject to the examination and inspection of the incorporate company of dyers of *London*; and that it shall and may be lawful to and for the master, wardens, and court of assistants of the said company of dyers, by writing or writings, under their common seal, to appoint honest and skilful persons to be searchers within the limits aforesaid; and out of the limits aforesaid, it shall and may be lawful for the justices of the peace, at their general or quarter-sessions of the peace for any county, city, town, or place, to appoint such searchers; and it shall or may be lawful for all or any such searchers, so to be appointed by the said company of dyers, or by the justices of the peace, as aforesaid, taking to his or their assistance a constable, or other peace-officer of the place (who is and are hereby required to be aiding and assisting in the premises), at all seasonable and convenient times in the day time, to enter into the shop, warehouse, or workhouse of any person or persons, or company or corporation whatsoever, using and exercising the trade, art, or mystery of dying, or into the shop, warehouse, or workhouse of any other person concerned in the dying of any such woollen goods as aforesaid, or in the making or fixing such marks to the same as aforesaid, to search and examine all or any cloths, bays, stuffs, and other woollen goods, dyed or to be dyed black or blue, and if any person or persons shall oppose, hinder, or refuse such search, every such offender shall, for every such offence, forfeit and pay ten pounds.

Recovery of penalties.

Secl. 5. "And all offences against this act, where the penalties or forfeitures shall exceed the sum of five pounds, shall or may be recovered by action of debt, bill, plaint, or information, in any of his majesty's courts of record at *Westminster*, wherein no essoin, privilege, protection, or wager of law, shall be granted or allowed, nor any more than one imparlance; and in cases where the penalties or forfeitures shall not exceed the sum of five pounds, the matter of the offence shall or may be examined, heard, and determined, by two or more justices of the peace, for the county, city, town, or place, where the offence shall be committed (such justices not being concerned in the matter of the said complaint), which examination shall be upon oath of one or more credible witness or witnesses, and all penalties and forfeitures, which shall happen by virtue of this act, shall, within the city of *London*, and suburbs thereof, and within ten miles distance of the same, go and be, the one moiety to the informer or informers, and the other moiety to the said company of dyers; and beyond such compass, the whole of such penalties and forfeitures shall go and be to the informer or informers, and prosecutor or prosecutors; and in case any offender

offender shall neglect or refuse to pay any of the said penalties or forfeitures, where the same shall not exceed the sum of five pounds, by the space of twenty days after the conviction of such offender, that then it shall and may be lawful to and for the justices of the peace before whom such conviction was had, and such justices are hereby required to issue their warrant or warrants, under their hands and seals, to the constable or constables of the ward, precinct, parish, town, or place, where such offenders shall inhabit, or can be found (within the limits of his or their jurisdiction), to levy the same by distress and sale of the offender's goods, returning the overplus (if any be), to the owner or owners; and, where no sufficient distress can be found, to commit the offender and offenders to the house of correction, there to be kept to hard labour for such time as the justices of the peace, before whom such conviction shall be had, shall think fit, not exceeding three months.

SECT. 6. " Provided, that all prosecutions for offences against this act shall be commenced within forty days next after the offence committed or discovered, and shall be prosecuted with effect, and without wilful delay; and if any person or persons shall find him or themselves aggrieved by the judgment or order of any of the said justices of the peace, such person or persons may appeal to the justices of the peace at the next general quarter-sessions to be held for the county, city, town, or place, where the offence shall be committed, giving reasonable and sufficient notice of such appeal, and the judgment and determination of the justices at such general quarter-sessions shall be final, and they have hereby power, upon such appeal, to allow such reasonable costs and charges to either party as they shall think just, to be levied and paid in such manner as is usual in other cases of appeal from orders of justices of the peace to the general quarter-sessions. Prosecution in 40 days.

SECT. 7. " And if any action or suit shall be commenced or prosecuted against any person or persons, for any thing he or they shall do in pursuance of this act, or in the execution of any of the powers thereby granted, all and every person and persons so sued may plead the general issue, and give this act, and the special matter in evidence; and if the plaintiffs or prosecutors shall become nonsuited, or forbear prosecution, or suffer discontinuance, or a verdict shall be given against him or them, or judgment upon demurrer, the defendant or defendants shall recover his and their trouble costs, for which he and they shall have like remedy as in cases where costs by law are given to defendants; and this act shall be taken and allowed as a public act in all courts and places within this kingdom, and all judges, justices, and others, are hereby required to take notice thereof as such, without special pleading of the same. General issue.

STAT. 12 Geo. 2, c. 21, s. 10. " No wool, wool-fels, mortlings, shorlings, woolstocks, worsted, bay, or woollen yarn, shall be packed up in any bag, barrel, case, chest, or any other package, but only in packs of leather or pack-cloth; on which shall be marked, on the outside, the words, *Wool* or *Yarn*, in large letters not less than three inches long, on

pain of forfeiting the same and the package, and three shillings for every pound weight, to be paid by the owner or packer.

Notice to the commissioners of the customs and bond to be given.

Sect. 11. " And no wool, woolsels, mortlings, shorlings, woolstocks, worsted, bay or woollen yarn, worsted yarn, cruels, or wool slightly manufactured, shall be put on board any vessel, to be carried coast-wise, or from one port to another, in *Great-Britain* or *Ireland*, without notice given to the officers of the port, and bond given for the landing thereof; and a licence taken from such officers for so doing, on pain of forfeiting the same, with the vessel and furniture; and the bond to be sued, if a certificate of landing the goods is not brought in six months.

How to be landed.

Sect. 13. " And, to prevent collusive landing, none of the said goods carried coast-wise shall be landed, but in presence of the officers, and at the proper quays; on pain of forfeiting the same, or the value, and three shillings for every pound, to be paid by the owner.

None but officers to enter informations for seizures.

Sect. 14, 15. " And, to prevent collusive seizures, or fraudulent agreements to evade the penalties, none but officers of the customs, excise, or salt, except the officers of the guard-ships hereafter mentioned, shall enter informations of seizures of wool or woollen goods, which shall be prosecuted in their or in the attorney-general's name, and not otherwise.

Penalties for collusive seizures.

Sect. 16. " And if such officer make any such collusive seizure, or fraudulent agreement, he shall forfeit two hundred pounds, and be disqualified for any office in the revenue; and the owner making such agreement with him shall forfeit treble value, to him who shall sue in the courts at *Westminster*, *Dublin*, or *Edinburgh*.

Encouragement to offenders to discover.

Sect. 17. " But if any person, concerned in such fraudulent seizure or agreement, shall first (in three months) discover his offence to the commissioners of the customs, so that one accomplice be convicted, he shall be discharged of the penalties, and shall have the whole money recovered on the conviction (the charges first deducted).

Information when prosecuted.

Sect. 18. " All actions, suits, and informations upon any act for preventing exportation of wool, woolsels, woolstocks, mortlings, shorlings, worsted, bay or woollen yarn, cruels, or wool slightly manufactured, or mattresses, or beds stuffed with combed wool, or wool fit for combing, fullers earth, fulling clay, or tobacco-pipe clay, or any other scouring earth or clay, from *Great-Britain* or *Ireland*, or for preventing the exportation, from *Ireland* into foreign parts, of cloths, serges, bays, kerseys, frizes, druggets, shalloons, stuffs, cloth serges, or any other drapery made of, or mixed with, wool manufactured in *Ireland*, may be entered and prosecuted (except as is herein after otherwise expressed) in any court of record at *Westminster*, or in the court of Exchequer in *Scotland*, or at the quarter-sessions of the peace, or before any two justices out of sessions in a summary way, or in *Ireland* by any law relating to the revenue. And if the property be claimed by any person, the proof shall lie upon him, and not on the officer or seizer.

Sect. 20. " On condemnation of any wool or other goods above-mentioned, the commissioners of the customs respectively shall cause them to be publicly sold to the best bidder, where they shall think proper, and out

out of the produce of such sale shall cause the charges of condemnation and sale to be paid, and the remainder to such person who shall seize, inform, or sue.

Sect. 21. "But if the officers shall receive information from any person, whereby any seizure is made, or any prosecution effected, such informer shall have half of what shall be recovered. Reward to informers.

Sect. 22. "And if any person convicted in the penalty of three shillings a pound be not able to pay the commissioners may cause one shilling a pound to be paid to the informer or prosecutor by the receiver of the revenue.

Sect. 23. "But if any master, mate, or mariner, shall in six months give an account, to the commissioners of the customs, of such ships, and goods, and offenders, so as any may be convicted, he shall be indemnified, and shall have moreover three fourths of the penalties recovered, clear of charges, and the king shall have the other fourth, charges deducted.

Sect. 25. "And if any person offer a bribe to any officer for connivance, he shall forfeit three hundred pounds to him who shall sue in any court of record at *Westminster*. Penalty on offering to bribe an officer.

Sect. 26. "And if any person shall oppose or hinder any the said officers, or their assistants, in seizing any the goods before-mentioned; or if any person, armed or disguised, shall attempt to rescue any the said goods seized; he shall be transported for seven years." Opposing officers felony.

STAT. 15 Geo. 2, c. 27, f. 1. "Whereas clothiers, and others concerned in the woollen manufacture, are under a necessity of letting their cloth and other woollen goods remain upon the racks or tenters, as also of suffering their wool to lie exposed in the night-time, in order the better to dry and prepare the same, whereby their said goods are more frequently liable to be stolen by wicked and evil-designing persons, who are encouraged in their wickedness by the difficulty of proving the identity of the goods stolen; therefore, to secure the property of such clothiers, and others concerned in the woollen manufacture, and to facilitate a discovery of such goods so stolen, be it enacted, &c. That in case any cloth or woollen goods remaining upon the rack or tenters, or any woollen yarn or wool left out to dry, shall be stolen or taken away in the night-time, it shall and may be lawful to and for any one or more justice or justices of the peace of the same county or place, upon complaint made to him or them, within ten days after such cloth, woollen goods, woollen yarn, or wool, shall have been so stolen or taken away, by the owner of such cloth, woollen goods, woollen yarn, or wool, by warrant under his or their hands and seals, to authorize and empower any constable, headborough, or other peace-officer, in the day time to enter into and search the houses, out-houses, yards, gardens, or other places belonging to the houses of all and every person and persons whom the owner of such cloth, woollen goods, woollen yarn, or wool shall upon his oath declare, to such justice or justices of the peace, he suspects to have stolen, taken away, or received the same; and in case such constable, or other officer, shall find or discover

discover any cloth, woollen goods, or wool, which he shall, from the information of the person making such oath, have reason to suspect to be so stolen, taken away, or received, he shall forthwith apprehend all and every person or persons, in whose custody or possession such cloth, woollen goods, or wool, shall be found, and carry him, her, or them, before some justice or justices of the peace of the same county, riding, division, liberty, city, or town corporate; and if the said person or persons so suspected, apprehended, and carried before the said justice or justices, shall not then and there give a satisfactory account, how he, she, or they, acquired the property or possession of such cloth, woollen goods, woollen yarn, or wool, or shall not, within some convenient time to be set by the said justice or justices, produce the party or parties of whom he, she, or they, received the same, or some other credible witness, to depose upon oath such property or right to the possession of the said cloth, woollen goods, woollen yarn, or wool, that the said person or persons so suspected, and not giving such satisfactory account, nor producing any such witness upon oath to testify as aforesaid, shall be deemed and adjudged as convicted of the said offence of stealing or taking away the said cloth, woollen goods, woollen yarn, or wool, and shall for the first offence forfeit and pay to the owner of such cloth, woollen goods, woollen yarn, or wool, treble the value thereof; and, in default of payment thereof in the time appointed by such justice or justices for the payment thereof, such justice or justices of the peace shall issue forth his or their warrant to levy the same by distress and sale of the offender's goods, returning the overplus, if any be, and, in default of such distress, shall commit the offender or offenders to the common gaol of the county, city, or place, where such offender or offenders shall be apprehended, there to remain for the space of three months without bail or mainprize, or until he, she, or they, pay the same; and if such person or persons shall again commit the said offence, and be thereof convicted as before, then they and every of them, so offending the second time, and being thereof so convicted, shall, over and above the forfeiture of treble the value of the cloth, woollen goods, woollen yarn, or wool, so found, to be recovered and levied as aforesaid, be committed to the common gaol as aforesaid, there to remain for the space of six months without bail or mainprize; and if such person or persons shall again commit the said offence, and be thereof convicted as before, the justice or justices of the peace, before whom such person or persons shall be so convicted as aforesaid, shall forthwith issue his or their warrant to commit the said offender or offenders to the common gaol as aforesaid, there to remain till the next assizes or great session, where the said offender or offenders shall be tried for the said offence; and in case such offender or offenders shall not, by producing the party or parties, of whom he, she, or they acquired the property or possession of such cloth, woollen goods, woollen yarn, or wool, or otherwise prove, to the satisfaction of the jury, that he, she, or they, lawfully obtained the property or possession of the same, he, she, or they, shall be adjudged to be guilty of felony, and suffer transportation for the space of seven years,
and

and shall be liable to the same punishment, and to the like methods of prosecution, trial and conviction, for returning from such transportation, as other felons transported are liable unto by virtue of the laws now in force.

Sec. 2. “ Provided that if any person or persons, so suspected and apprehended as aforesaid, shall find him, her, or themselves aggrieved by any judgment or determination which shall be given or made by any justice or justices of the peace by virtue of this act, it shall and may be lawful to and for such person or persons so aggrieved (unless he, she, or they, have twice before been convicted of the same offence), to appeal unto the justices of the peace in their general quarter-sessions, which shall happen to be held next after such judgment or determination given or made, who are hereby authorized and impowered to give such relief, and make such order therein, as to them shall seem meet; and such judgment, order, or determination, as shall be by them made upon the said appeal, shall be final to all intents and purposes whatsoever.

Sec. 3. “ Provided also that this act shall not extend to alter or repeal any law now in force, for the punishment of any person or persons stealing or receiving such cloth, woollen goods, woollen yarn, or wool, except in such cases where the proof is laid upon the offender or offenders, as aforesaid.”

“ An act for repealing several laws relating to the manufacture of woollen cloth in the county of York, and also so much of several other laws as prescribes particular standards of width and length of such woollen cloths; and for substituting other regulations of the cloth trade within the west riding of the said county, for preventing frauds in certifying the contents of the cloth, and for preserving the credit of the said manufacture at foreign markets.”

*“ Whereas an act was made in the seventh year of the reign of her late ma- Preamble re-
jesty queen Anne, intituled, An act for the better ascertaining the lengths citing act,
and breadths of the woollen cloth made in the county of York: and where- 7 Anne.
as another act of parliament was made and passed in the eleventh year of the 11 Geo. 1.
reign of his late majesty king George the first, intituled, An act for the better
regulating the manufacture of cloth in the west riding of the county of
York: and whereas another act of parliament was made and passed in the seventh 7 Geo. 2.
year of the reign of his late majesty king George the second, intituled, An
act to explain and amend an act passed in the eleventh year of the reign of
his late majesty king George the first intituled, An act for the better regulat-
ing the manufacture of cloth in the west riding of the county of York: and where-
as another act of parliament was made and passed in the fourteenth year of the & 14 Geo. 2.
reign of his late majesty king George the second, intituled, An act for conti-
nuing an act passed in the seventh year of the reign of his present ma-
jesty, To explain and amend a former act passed in the eleventh year of the reign
of his late majesty king George the first, for the better regulating the manufacture
of cloth in the west riding of the county of York, and for making the said acts
more effectual; which said several acts of parliament, notwithstanding the
many*

The said recited acts repealed.

Justices to appoint searchers and measurers.

When the searchers shall measure and seal.

many good provisions and directions therein contained, have nevertheless been found by experience not to be effectual for the preventing the frauds, abuses, and deceits, which are frequently used and practised in the manufacture of woollen cloth within the west riding of the said county of York, particularly in the unreasonable stretching and straining the said cloths; which ill practices tend very much to the debasing, undervaluing, and discrediting of the said manufacture, both at home and in foreign parts beyond the seas, where great part thereof hath been usually vended; be it therefore enacted, by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That the said several recited acts of parliament of the eleventh year of his late majesty king *George* the first, and of the seventh and fourteenth years of his late majesty king *George* the second, and every clause, matter, and thing, therein respectively contained, and so much of all and every other act or acts heretofore made as relate to the ascertaining the length, breadth, or weight, of woollen cloths, within the said west riding of the county of *York*, shall, from the twenty-fourth day of *June*, one thousand seven hundred and sixty-five, be repealed.

Sect. 2. " And, for preventing frauds, deceits, and abuses, for the future, be it enacted by the authority aforesaid, That the justices of the peace for the said west riding of the county of *York*, (not being dealers in woollen cloth, or occupiers of any fulling mill) at their next quarter sessions of the peace, to be holden for the said riding, next after the twenty-fourth day of *June*, one thousand seven hundred and sixty-five, or at some adjournment of the same, and at their general quarter sessions of the peace, to be holden next after *Easter* yearly, shall and may, and they are hereby authorized and required to choose and appoint so many men, of good character and repute, within the said riding, (being persons following, or having been brought up in the manufacture of woollen cloth in the said riding, and being under the age of sixty years) as they shall think convenient, to be searchers and measurers of cloth within the said riding, and to appoint and station such measurers and searchers so to be chosen, at such mills and other places, and in such manner as to the said justices, at their general or adjourned sessions, shall seem meet and convenient; and shall and may assign, allow, and appoint, to the said searchers and measurers, so appointed, such yearly salaries, as the said justices, at their said general or adjourned sessions, or the major part of them, shall think proper.

Sect. 3. " And it is hereby further enacted, That such of the said searchers and measurers as shall be appointed to, or stationed at, any mill or mills within the said riding, shall and may, and they are hereby authorized and directed, at their respective fulling mills, where they shall respectively be stationed or placed, to measure all the cloths, and ends or half cloths, which shall be there milled respectively, at the respective times, and in manner herein after mentioned; that is to say, such cloths or ends as shall be streamed or washed in the goit or mill stream of the said

faid mills refpectively, fhall be meafured within fix, and not fooner than four hours after the fame fhall be fteam'd or wafhed; and fuch cloths or ends as fhall not be fo fteam'd or wafhed, fhall be meafured within four hours after the fame fhall come out of the flock; and every fuch fearcher and meafurer fhall affix or caufe to be affixed, on one end of every fuch cloth, before it fhall be carried from the mill, a feal of lead, to be furnifhed and provided by the maker of fuch cloth, and fhall rivet the feal, fo to be affixed by him on every fuch cloth, and ftamp, in words and figures, plainly to be read and diftinguifhed, upon the feal or rivet, his name, and the length and breadth of every fuch cloth, together with the number of each of fuch cloths, milled at fuch fulling mill fucceffively, beginning at the time of his entering to his faid office with number one, and proceeding progressively, until the twenty-fifth day of *March* then next enfuing; and on the faid twenty-fifth day of *March* then next enfuing, and on every fucceeding twenty-fifth day of *March*, beginning again with the fame number one, and proceeding progressively in numbers, during the year then enfuing; and immediately after the faid cloth fhall be meafured, fealed and ftamped as aforefaid, the faid fearcher and meafurer, meafuring and ftamping the fame, fhall enter in a book, to be provided by the treafurer, and kept by fuch fearcher or meafurer for that purpofe, the name and place of abode of the maker of every fuch cloth, and the colour or fort of fuch cloth, together with the length, breadth, and number on the feal; and fhall give, at the leaft once in every month, to the fupervifor within whole diftrict the faid mill fhall be fITUATE, an account of all the cloths milled, meafured, and ftamped at fuch mill during fuch month; and the owner or maker of fuch cloth fhall pay to the faid fearcher and meafurer, for meafuring and fealing of fuch cloth, the refpective fums following; *videlicet*.

“ For the feal of every whole or long cloth, containing in length thirty-
yards or upwards, the fum of fix pence.

“ And for every end or half cloth, containing lefs than thirty-five yards
and more than thirty yards in length, the fum of four-pence.

“ And for every end or half cloth, containing lefs than thirty yards in
length, the fum of three-pence.

Which faid fums fhall be accounted for and paid by fuch fearcher or meafurer, to the treafurer of the weft riding for the time being, to be applied for fuch purpofes as are herein after directed.

Sec. 4. “ And it is hereby further enacted by the authority aforefaid, That
if any fearcher or meafurer fhall neglect or refufe to meafure and ftamp
any fuch cloth, end or half cloth or to give fuch monthly account, or give
a falfe or fraudulent account of the cloths by him meafured and ftamped
as aforefaid, fuch fearcher or meafurer, being thereof legally convicted on
the oath of one or more credible witnefs or witnefses, before any fuch juftice or juftices of the peace as aforefaid, fhall, for the firft offence, forfeit
and pay the fum of twenty fhillings, one moiety whereof fhall be paid to
the informer or informers, and the other moiety to the treafurer for the
faid riding; and for the fecond offence fhall forfeit or lofe his office or

and what
fhall be paid
for the fame
and how ap-
plied.

Penalty on
fearchers ne-
glect.

place, and be for ever after rendered incapable of being appointed a searcher or measurer of woollen cloth.

Makers not
to take cloths
from the mills
before they
are measured
and stamped.

Sett. 5. “ And be it further enacted, That no cloth maker shall take away his cloth from any such fulling-mill, in case the same hath been streamed or washed, before the same hath laid six hours after it hath been so streamed or washed, or before such cloth hath lain four hours after it has come out of the stock (in case it shall not be washed or streamed) unless such cloth shall be sooner measured and stamped in manner hereby directed, by the searcher or measurer, at the mill where such cloths shall respectively be milled or fulled; and if any cloth maker shall take away his cloth from the mill before the same shall be so measured and stamped, or before the sum of money, hereby directed to be paid for the measuring, sealing, and stamping thereof, be duly paid and satisfied, or shall take away his cloth after nine of the clock in the evening, or before five of the clock in the morning, unless the same shall be measured and stamped; every person so offending in any of the said cases, and being thereof convicted upon the oath of such searcher or measurer, or of the inspector or supervisor herein after directed to be appointed, or of any other credible witness, before one or more justice or justices of the peace for the said riding, or any corporation within the same (such justice or justices not being traders or dealers in the woollen manufacture, or farmers or occupiers of a fulling-mill) every person so offending, shall for every such offence, forfeit and pay the sum of twenty shillings, to be levied and recovered in such manner as is herein after mentioned, and to be applied and disposed of in manner following; that is to say, one moiety thereof to the informer, and the other moiety to the treasurer of the west riding of the county of *York*.

Cloths to be
sealed before
they are put
upon the ten-
ters.

Sett. 6. “ And it is hereby further enacted by the authority aforesaid, That every maker of cloth, commonly called *Broad Cloth*, within the said riding, after every cloth, end or half cloth, shall be brought from the fulling mill, and before the same shall be put upon the tenter, shall measure the same, and shall affix, or cause to be affixed, on the other end of every such cloth, one other such seal of lead, and shall rivet the same, and stamp upon such seal or rivet, in figures plainly to be seen and distinguished, the length and breadth of every such cloth.

Justices to ap-
point inspec-
tors of fulling
mills.

Sett. 7. “ And be it further enacted by the authority aforesaid, That the justices of the peace for the said west riding of the county of *York*, (not being dealers in woollen cloth, or occupiers of any fulling mill) at their quarter-sessions of the peace to be holden for the said riding next after the twenty-fourth day of *June*, one thousand seven hundred and sixty-five, or at some adjournment of the same, and at their general quarter-sessions of the peace to be holden after *Easter* yearly, shall and may, and they are hereby authorized and required to chuse and appoint so many men, of good character and repute, within the said riding, not exceeding twelve in number, to be inspectors of all cloths, called *broad woollen cloths*, and the workshops, tenters, tenter grounds, and warehouses of the merchants or dressers where any such cloths, made and milled within the said riding,

riding, shall be dressed or tentered, and to appoint and station the said inspectors to inspect and examine such and so many workshops, tenter grounds, tenters, and warehouses, and in such districts, towns, parishes, or places, and in such manner, as to the said justices, at their general or adjourned sessions, or the major part of them, shall think proper; and also the said justices, at their said sessions, shall and may, and they are hereby directed to chuse and appoint such and so many men of good repute, within the said riding, not exceeding four in number, to be supervisors of the several fulling mills within the said riding, and of the conduct and behaviour of the several searchers and measurers appointed and stationed at such mills respectively, and of all cloths called *broad woollen cloths*, and the workshops, tenters, tenter grounds, and warehouses, of the merchants or dressers where any such cloths made and milled within the said riding, shall be milled, dressed, or tentered, and of the conduct and behaviour of the several inspectors so to be chosen and appointed as aforesaid; and to appoint and station the said supervisors respectively in such districts, towns, parishes, or places, in such manner as to the said justices, at their general or adjourned sessions, or the major part of them, shall think proper, in order to prevent the false stamping and undue stretching of woollen cloths, and to enforce the due observation of this act; and shall and may assign, allow, and appoint, to the said inspectors, such yearly or other salaries as the said justices, at their quarter-sessions to be held next after the twenty-fourth day of *June*, one thousand seven hundred and sixty-five, or at the said general or adjourned sessions to be held yearly after *Easter*, or the major part of them, shall think proper; provided that no such salary shall be less than twenty pounds for one year, nor less in proportion for part of a year; and also shall and may, at the same times, assign, allow, and appoint, to the said supervisors, such yearly or other salaries, as they shall think proper and convenient; provided that no such salary shall be less than forty pounds, and ten pounds more if their duty require them to keep a horse, to one supervisor for one year, nor less in proportion for part of a year; and all and every such searcher and measurer, inspectors and supervisors, before he or they shall enter upon the duty of his or their said office, shall severally and respectively take the following oath, before one or more justice or justices of the peace for the said riding; that is to say,

who are to conform to the rules of the general quarter-sessions, and to take an oath.

I A. B. do swear, That I will well and truly, to the best of my skill and power, execute the office of a searcher and measurer, or an inspector or supervisor (as the case may be) of woollen cloth, within the west riding of the county of York. The oath.

So help me G O D.

Sett. 8. “ And be it further enacted by the authority aforesaid, That the said supervisors so to be chosen and appointed, shall, and they are hereby required to be daily employed in visiting the several and respective mills, grounds, tenters, ^{Supervisors to visit mills and tenter grounds,}

tenters, tenter grounds, workshops, and places, within the respective districts allotted to them as aforesaid, where any such cloths shall be milled, dressed, or tented, and shall, out of the number of cloths which shall come under their several and respective inspections, measure and mark with a seal of lead, whereon shall be impressed or stamped the name of such supervisor, so many of such cloths as they conveniently can, or their time will allow, and shall keep a regular and distinct account of such cloths as they shall severally examine, measure, and mark, and shall transmit the same, together with the accounts by them respectively received from the searchers and measurers at the several mills within their respective districts, to the justices of the peace, at every quarter-sessions held for the said riding; and if any of the said inspectors or supervisors shall be negligent or remiss in his duty, or shall transmit a false account of the cloths by him or them respectively measured and marked as aforesaid, such inspector or supervisor shall forfeit and lose his office.

How inspectors are to act if they find cloth falsely stamped.

Stat. 9. "And be it further enacted, That if any of the said inspectors or supervisors shall find any cloth or cloths falsely stamped by any of the measurers or searchers, above two inches in breadth, or above one yard in length, such inspector or supervisor shall, within seven days after the same shall be discovered, give information thereof to one of his majesty's justices of the peace within the said riding (not being a dealer in woollen cloth, or occupier of any fulling mill) and on conviction of such measurer or searcher, before any such justice of the peace as aforesaid, such searcher or measurer shall forfeit and pay, for every such offence, the sum of ten shillings, to be recovered as any other penalty is hereby directed to be recovered; one moiety whereof shall be paid to the informer, and the other moiety to the treasurer for the said riding.

How inspectors shall be appointed in case of death, &c.

Stat. 10. "Provided always, and be it further enacted by the authority aforesaid, That if any person, who shall be so appointed, to be a searcher and measurer, or an inspector or supervisor of cloth, shall happen to die, during the year in which he is so appointed, or shall be removed or displaced from his said office, or shall by sickness, or any other accident, be rendered incapable of executing the said office, that then, and in any of the said cases, it shall and may be lawful for any one of such justices of the peace as aforesaid, living near to the place where such searcher and measurer, inspector or supervisor, did or shall reside, to appoint some other proper person, properly qualified, to supply the place of such searcher and measurer, inspector or supervisor, until the next *Easter* sessions, to be there, by the major part of such justices present, confirmed, or another person appointed in his place; or in case of sickness, or other accident, during the sickness or incapacity of such searcher and measurer, inspector or supervisor; and the person so confirmed or appointed shall take the same oath, and be invested with the same powers, and liable to the same penalties for any breach or neglect of duty, as the searchers and measurers, inspectors or supervisors, respectively elected or to be elected at the *Easter* sessions, by virtue of this act, are or ought to be.

Stat.

Seet. 11. "And be it further enacted by the authority aforesaid, That it shall and may be lawful for every such inspector or supervisor, from time to time, as occasion shall require, in the day-time to enter into any shop or shops, out house or out-houses, tenter grounds or warehouse, of any merchant or merchants, dresser or dressers, or any other dealer in cloth, or any fulling mill, or any out-house or out-houses, or other places belonging hereto respectively, within the said riding, to search for any woollen cloth, which he shall suspect to be falsely or unduly stamped, or be stretched or strained more than is allowed by this act, or any alteration made in the seal or seals, contrary to the direction, true intent and meaning of this act; and for the better discovering of such abuse, to measure, or cause to be measured, any such cloth; and in case of resistance or refusal by any person, to permit and suffer such inspector or supervisor to enter the said places, or any of them, for the purposes aforesaid, the person so resisting or refusing shall forfeit the sum of ten pounds, on conviction thereof before any such justice of the peace; and if such inspector or inspectors shall at any time find any woollen cloth, after the times herein directed for sealing the same, without the seal or seals hereby directed to be put thereon, or such seal or seals defaced, counterfeited, or altered, except it shall appear that such seal or seals was or were accidentally lost or maliciously taken off, or that any of such cloths appear, by the lowest of the marks, stamps, or seals, to be over stretched or strained, either in breadth or length, beyond the dimensions allowed of and provided for by this present act, or that the name and place of abode of the maker of such cloths shall be cut out or altered; in such case the owner of such cloth, or the person in whose custody such cloth shall be found, shall, for every such offence, forfeit not exceeding the sum of five pounds, nor less than forty shillings.

Inspectors to enter shops where they shall suspect any undue stamped or stretched cloths.

Penalty on offenders.

Seet. 12. "Provided nevertheless, That nothing herein contained shall extend, or be construed to extend, to give any power or authority to such inspector or inspectors, to be appointed pursuant to this act, to search and examine such cloths as shall be pressed and packed up for exportation.

Provido.

Seet. 13. "And be it further enacted by the authority aforesaid, That it shall and may be lawful to and for the justices of the peace for the said west riding, or the major part of them, at their general quarter-sessions of the peace to be held yearly after *Easter*, and they are hereby empowered to make and issue such further orders and directions, to the several officers to be appointed by virtue of this act, for the more effectual execution thereof, as to them shall seem meet; all which regulations, orders, and directions, the several searchers, measurers, inspectors, and supervisors, so to be appointed, shall, and they are hereby required to obey and perform.

Justices to make regulations.

Seet. 14. "Provided always, and it is hereby further enacted by the authority aforesaid, That if the merchant or buyer of any such cloth shall have cause to suspect the real and true lengths and breadths of such cloth not to be the same as stamped upon such seal or seals, such merchant or buyer shall and may, for proof thereof, have the liberty, within six weeks next after his buying the same (if such cloth shall not before then have been raised,

Where merchants suspect frauds, they may wet the cloths, and have them measured by the inspector.

raised, dressed, or dyed) and upon two days notice given in writing to all the parties, who measured and stamped the said cloth, to put such cloth into cold water, for any time not exceeding four hours, and, immediately after the same shall be taken out of the water, to cause the same to be measured by some sworn inspector or supervisor of cloth, in and for the said riding; and if, upon such admeasurement last mentioned, there shall be found a less or smaller quantity of cloth in length, or less or smaller quantity in breadth, in more than one half part of the length thereof than is mentioned on any of the seals affixed to such cloth; in every such case the searcher, measurer, or supervisor, who measured and stamped the said cloth, being convicted of having wilfully and knowingly affixed such false and fraudulent seals to such cloth, upon the oath of the inspector or supervisor who last measured the said cloth as aforesaid, or of any other credible witness, before one or more such justice or justices of the peace for the said riding, or any corporation within the same (not being dealers in woollen cloth, or occupiers of any fulling mill) shall, for every such offence, forfeit and pay the respective penalties and sums following: that is to say,

Penalty on
conviction.

“ For two inches in breadth, or one yard in length, that such cloth shall fall short of the measure stamped and marked on the seals thereto affixed, the sum of five shillings; and

“ For every other inch in breadth, or yard in length, so overstamped, the sum of ten shillings.

“ The said penalties, after deducting thereout the costs and charges of such prosecution and conviction, to be paid and applied as follows; *videlicet*, one moiety to the informer, and the other moiety to the treasurer of the west riding of the said county of *York* for the purposes herein after-mentioned.

Where false
seals are,
found, the
inspector is to
fix new seals,
which are to
be the rule of
payment for
the cloths,

Sect. 15. “ And be it enacted by the authority aforesaid, That in all such cases, upon such second admeasurement of any such cloths as aforesaid, where any of the seals affixed shall be found not to contain the just lengths and breadths of such cloths, then, and in every such case, the inspector or supervisor, who, upon such information and complaint as aforesaid, measured the same, shall affix on every such cloth new seals, to be made and fixed as aforesaid, which shall contain the true lengths and breadths of the said cloth, and that the length and number of yards, by such inspector or supervisor so stamped on such seals as aforesaid, shall be the rule of payment for such cloth by the merchant or buyer thereof, save only that such merchant or buyer (in order to discourage the vending or exposing to sale of any such cloth with such defective and fraudulent seals) shall and may, and he is hereby authorized and empowered, to deduct and retain to himself, out of the price of such cloth, upon which the maker, searcher, measurer, or supervisor thereof shall have fixed such defective and fraudulent seals as aforesaid, the value or amount of so many yards thereof, out of the number of yards in length so stamped upon such seals by such inspector or supervisor who last measured and stamped the same as aforesaid, as the said cloth shall fall short in inches of breadth, or yards in length, of the length and breadth respectively expressed on the former fraudulent seal so affixed by the maker.

Seet. 16. “ And it is hereby enacted and declared, That it shall and may be lawful to and for the said treasurer to deduct and detain the sums of money to be forfeited by the searchers and measurers, inspectors and supervisors respectively, out of the yearly salaries of such searchers and measurers, inspectors and supervisors respectively, as such salaries respectively shall become due and payable. Treasurer to deduct money forfeited out of inspectors salaries.

Sect. 17. “ And be it further enacted, That every offender or offenders, against whom such information shall be made as aforesaid, shall and may, and are hereby authorized and impowered, within two days after notice of such information to him or them given, to go to the house of the merchant, buyer, or owner of the cloth in such information mentioned, and request to see the said cloth, to examine that the crimes and facts so charged upon them be just, and that no frauds have been committed by the merchant, buyer, or owner of the same; and that upon the merchant, buyer, or owner of such cloth refusing to permit and suffer such offender or offenders to see or examine such cloth as aforesaid, such prosecution, so intended to have been made against such offender or offenders, shall be at an end and cease; and any conviction to be made thereupon shall be void, and of none effect. Persons charged with frauds may examine the cloths in the merchant's hands, &c.

Seet. 18. “ And be it further enacted by the authority aforesaid, That every clothier and maker of such cloth shall, at the time of making thereof, weave or sew into the head of the cloth, in distinct letters or words, plain to be read, at length, the name and place of abode of such clothier and maker; and if any clothier or maker of such woollen cloth shall, after the twenty-fourth day of *June*, one thousand seven hundred and sixty-five, expose to sale any cloth without such seals as before directed, or without such name and place of abode so woven and sewed into such cloth, in words at length, plainly to be seen and read, such clothier or maker, so offending, and being thereof lawfully convicted upon the oath of any one or more credible witnesses or witnesses, made before any such justice or justices of the peace for the said riding, or any corporation within the same (he being no dealer in cloth, or occupier of any fulling mill) who is hereby authorized to administer the said oath, shall forfeit the sum of twenty shillings for every such piece of cloth so by him exposed to sale without such seals as aforesaid, and the sum of forty shillings for every piece of cloth so by him exposed to sale without such name and place of abode so sewed or woven into the same as aforesaid; and if any person or persons whatsoever shall willingly take off, alter, or counterfeit, deface, obliterate, or cut out, any of the aforesaid seal or seals of lead so fixed and riveted to such end or half cloth, or to such long or whole cloth, or the figures, letters, and words thereon stamped, made, or set, or therein woven or sewed, before the cloth be taken off the tenters and brought to the press, every person or persons so offending, and every person in whose custody any such cloth without seals, or with the seals defaced, cut out, or obliterated, as aforesaid, shall be found, being thereof legally convicted, for every such offence shall forfeit not exceeding the sum of five pounds, nor less than forty shillings. Clothiers to weave their names and places of abode in the heads of their cloths. Penalty on persons defacing or counterfeiting seals, &c. before cloth taken from the tenters.

Payments for
milling long
cloths.

Secl. 19. " And be it futher enacted, That for every yard of cloth, exceeding the length of fifty-eight yards, whether in one cloth, or in two short cloths or ends, which shall be milled in one stock, at one and the same time; the owner of such cloth or cloths shall pay to the miller of such cloth or cloths, the sum of one half-penny *per* yard, for every yard such cloth (whether consisting of one cloth only, or of two short cloths or ends) shall exceed the length of fifty eight yards, over and above the usual price for milling a stockful, or fifty-eight yards of cloth.

Justices to settle
the disputes
between clothiers
and millers.

Secl. 20. " And be it further enacted by the authority aforesaid, That all disputes and demands which shall hereafter arise between the makers of such cloths as aforesaid, and the occupiers of such fulling mills, or their agents or servants, relating to the wages for fulling, milling, or scouring, of any such woollen cloths as aforesaid, shall, in case such occupiers, agents, or servants, desire the same, and the matter in dispute shall not exceed the sum of two pounds, be heard and determined by one or more justice or justices of the peace for the county, division, or place, where such disputes or demands shall arise (such justice or justices not being traders or dealers in the woollen manufacture, farmers or occupiers of a fulling mill) who is and are hereby required and authorized, upon complaint to him or them made, to summon the parties, and to hear and examine upon oath, and adjudge such damages, and give such costs, not exceeding ten shillings, to the party so aggrieved, as in his or their discretions shall seem reasonable; and to issue his or their warrant or warrants, to levy such costs and damages by distress and sale of the goods and chattels of such person or persons who shall refuse, for the space of ten days, to pay such costs or damages by him or them so adjudged.

Penalty on
stretching or
straining
cloths.

Secl. 21. " And it is hereby further enacted by the authority aforesaid, That if any person whatsoever, after the twenty-fourth day of *June*, one thousand seven hundred and sixty-five, shall stretch or strain, or cause or procure to be stretched or strained, any whole or long cloth, or end or half cloth, more than one yard in length, in every twenty yards of the length thereof, or more than one inch in every twenty inches of the breadth thereof (the whole yard in breadth containing thirty-six inches only) and so in proportion for cloths that are more or less in lengths and breadths, above or beyond the length or breadth of such cloth, upon the lowest of such stamps or seals, marked, set down, and expressed; then, and in such case, every person so offending, and being thereof convicted by the oath of one or more credible witness or witnesses, before one or more such justice or justices of the peace as aforesaid, shall, for every quarter of a yard in length such cloth shall be overstretched, forfeit and pay the sum of ten shillings; and for every inch in breadth such cloth shall be overstretched, forfeit and pay the sum of twenty shillings; which said sums shall be recovered and applied in the same manner as the other penalties are herein directed to be recovered and applied.

Owners of
tenters to
measure and
mark the

Secl. 22. " And, for the better and more easy discovery of the undue stretching and straining of cloth, be it further enacted by the authority aforesaid, That every owner or proprietor of any tenter or tenters, in the

said west riding of the said county of *York*, shall, and he is hereby required, to measure such tenter or tenters as shall be made use of for tentering of cloth, and to mark or number in figures plain and fair to be seen, the true length of yards (computing thirty-seven inches to each yard) of each tenter or tenters, beginning at number one, and so continuing it to the end thereof, marking and numbering each yard distinctly, plainly, and fairly to be seen, upon the top bar belonging to each tenter, on the fore-side thereof; and if any such tenter or tenters shall, after the twenty-fourth day of *June*, one thousand seven hundred and sixty-five, be found not to be measured, and truly marked and numbered as aforesaid, the occupier of such tenter or tenters shall forfeit and pay the sum of five pounds for each tenter that shall be found not so numbered and marked as aforesaid; such penalty to be levied and recovered as any other penalty is hereby directed to be recovered and levied.

Sett. 23. " And whereas the using of cards made with wire, or with wire teeth, in dressing of cloth, hath by experience been found to be very prejudicial to the said woollen manufacture: now, to the end the said woollen manufacture may be improved as much as possible, be it enacted by the authority aforesaid, That if any person or persons, within the said west riding of the said county of *York*, shall, from and after the twenty-fourth day of *June*, one thousand seven hundred and sixty-five, use or cause to be used, in dressing of cloth, any cards made with wire, or with teeth of iron, or any other metal whatsoever; every such person or persons so using the same, shall, for every such offence, forfeit forty shillings.

Sett. 24. " Provided always, and it is hereby further enacted, That information upon oath shall be given of the offences mentioned in this act, within the space of twenty days next after such offence shall be discovered; and all and every the offences in this act mentioned (except such for which any other remedy is hereby provided) shall be enquired of and determined, and convictions thereon made upon oath of one or more credible witnesses or witnesses, by any one or more justice or justices of the peace (not being a dealer in woollen cloth, nor occupier of any fulling mill as aforesaid) notice being first given of the charge to the person or persons therewith charged; and that all such penalties and forfeitures as shall or may happen by reason of this act, shall go and be disposed of, one half to the person or persons who shall give information of the offence on which the conviction shall be made, and the other half to the treasurer of the said riding; and if any offender or offenders shall, by the space of ten days next after he or they shall be convicted of any of the offences aforesaid, and have notice thereof to him, her, or them given, at his, her, or their dwelling house, or place of abode, refuse or neglect to pay any forfeiture by him, her or them incurred, by reason of this act, or shall not appeal, as is herein after provided, to the quarter sessions, then, and not before, it shall and may be lawful to and for the justice or justices of the peace, before whom such conviction shall be made, or any other justice or justices of the peace for the said riding, or any corporation within the same, not being a dealer in woollen broad

Penalty on using cards made with wire or wire teeth.

How offences shall be prosecuted, and forfeitures applied.

cloth, or occupier of any fulling mill) upon a certificate of such conviction sent to him or them, from the justice or justices before whom such conviction was made; and he or they is or are hereby authorized and required to issue out one or more warrant or warrants, under his or their hand and seal, or hands and seals, to the constable of the town or place, or bailiff or bailiffs of the liberties, wapentakes, or limits, where such offender or offenders doth or shall inhabit, thereby commanding him or them to levy the same by distress and sale of the offender's goods and chattels, returning the overplus (if any be) after paying likewise the charges of such distress and sale, to the offender or offenders demanding the same; and where no sufficient distress can be found, to commit the offender or offenders to the house of correction, for any time not exceeding three months.

Appeal to the
quarter
sessions.

Se^t. 25. “ Provided always, and it is hereby further enacted by the authority aforesaid, That if any person or persons shall find him, her, or themselves, aggrieved by any order or warrant made by any justice or justices, or upon any conviction before him or them, in pursuance of this act, such person or persons may appeal to the next general quarter sessions to be held for the said west riding of the said county of *York*, which shall not be held within fourteen days next after the cause of appeal shall arise, giving ten days notice of such appeal to the person or persons discovering the offence on which the conviction was made; and if the justices at the said quarter sessions either confirm or disannul the orders or proceedings of the said justice or justices, they shall allow such costs, and charges to the party aggrieved thereby, as they shall think reasonable; to be levied and paid in such manner, as is usual in cases of appeal from any order of the justices of the peace to the sessions, whose order herein shall be final:

Justices, &c.
to transmit to
the quarter
sessions ac-
counts of
convictions,
&c.

Se^t. 26. “ And it is hereby enacted and declared, That the several justices of the peace before whom any conviction shall be made by virtue of this act, as also the several searchers, measurers, inspectors, and supervisors, so to be appointed, shall, and they are hereby required at the four general quarter sessions of the peace in and for the said riding, held quarterly in every year, to return and transmit to the justices of the peace assembled at such general quarter sessions, a true and perfect account in writing, of all the convictions to be made pursuant to this act that shall happen within their knowledge, and of all the penalties and forfeitures inflicted or levied by means or on account thereof, which by virtue of this act, are made payable to the said treasurer for the time being; and shall, at the same time, pay or cause to be paid to the treasurer for the time being, all and every sum and sums of money by them, or any of them, or for their or any of their use, had or received, for or on account of any such conviction or convictions, and which by this act are made payable to the said treasurer; and every person and persons neglecting or refusing to return and transmit such account, or to pay, or cause to be paid, such sums of money so by them received, or in their hands, or any part thereof, for the space of twenty days next after any of the said sessions, and being thereof convicted upon the oath of one or more credible witness or witnesses, before any two justices of the peace of and for the said riding (not being dealers in cloth, or occu-

piers.

piers of any fulling mill) shall forfeit and pay the sum of ten pounds, over and above the several sums by him or them received, or being in his hands as aforesaid, to be recovered, paid, and applied, in such manner as the other penalties inflicted by this act are directed to be recovered, paid, and applied.

SeEt. 27. " And be it further enacted by the authority aforesaid, That this act shall extend to all woollen cloth which shall be made and milled in the west riding of the county of *York*; except such narrow woollen cloths as are mentioned and described, and for which provision is made in and by one act made in the eleventh year of the reign of his said late majesty king *George* the second, intituled, *An Act for the better regulating of narrow woollen cloths in the west riding of the county of York.* This act shall extend to all woollen cloths, except such narrow cloths as are described in act 11 Geo. 2.

Sect. 28. " And whereas there is now in the hands of the treasurer of the west riding of the county of *York* a considerable sum of money, which hath arisen by and out of the duties granted by the said former acts for the stamping and measuring of cloth: now it is hereby further enacted by the authority aforesaid, That the said treasurer of the said west riding for the time being, shall, out of the money remaining in his hands, and which shall hereafter be received by him on account of the duties herein before directed to be paid to such treasurer as aforesaid, in the first place, pay the charges and expences attending the passing this act, and shall afterwards pay and apply the said duties and penalties, as the same shall come in and be received, to the payment of the salaries of the searchers or measurers, inspectors and supervisors of cloth, herein before directed to be chosen and appointed as aforesaid, in such proportions, and in such manner, as the justices of the peace of and for the said riding, at their general quarter sessions yearly to be held next after *Easter*, shall direct and appoint. Application of money now in the hands of the treasurer of the west riding.

SeEt. 29. " And it is hereby further enacted by the authority aforesaid, That after all the money to be expended in and about the obtaining this act, shall be totally paid off and discharged, it shall and may be lawful to and for the justices of the peace for the said west riding, at their general quarter sessions held next after *Easter* yearly, to make orders for the increasing or diminishing the rates or duties to be paid for measuring, stamping, and sealing of cloth, so as the same shall never exceed six pence for every such whole cloth, and three pence for every such end or half cloth as aforesaid. When justices may increase or diminish the rates.

Sect. 30. " And be it further enacted by the authority aforesaid, That if any suit or action shall be commenced or prosecuted against any person or persons for any thing done or to be done in pursuance of this act, every such suit or action shall be commenced within six calendar months next after the fact committed, and not afterwards; and shall be laid, brought, and tried, in the county of *York*, and not elsewhere; and the defendant or defendants in such suits or actions shall and may plead the general issue, and give this act, and the special matter, in evidence, at any trial to be had thereupon; and that the same was done in pursuance of, and by the authority of, this act; and if it shall appear to be so done, or if any such suit or action shall be brought after the time before limited for bringing the same, or shall be brought in any other county or place; that then the jury shall Limitation of actions.

Treble costs.

Publick act.

find for the defendant or defendants: and upon such verdict, or if the plaintiff or plaintiffs shall become nonsuit, or discontinue his, her, or their action, after the defendant or defendants shall have appeared; or if, upon demurrer judgement shall be given against the plaintiff or plaintiffs; the defendant or defendants shall and may recover treble costs, and have the like remedy for the same as any defendant or defendants hath or have for costs in other cases by law.

Stat. 31. "And it is hereby further enacted and declared, That this act shall be deemed, and taken to be, a publick act; and all judges, justices, and other persons, are to take notice thereof as such, in all courts and places whatsoever, without specially pleading the same."

Wreck.

Stat. 2 Ed. 1. c. 4. [A. D. 1275, intituled] "What shall be adjudged wreck of the sea, and what not."

5 Co. 106.

5 Ed. 3, 3.

Bro. wreck, 1.

CONCERNING wrecks of the sea, it is agreed, that where a man, a dog, or a cat escape quick out of the ship, that such ship nor barge, nor any thing within them, shall be adjudged wreck: (2) but the goods shall be saved and kept by view of the sheriff, coroner, or the king's bailiff, and delivered into the hands of such as are of the town, where the goods were found; (3) so that if any sue for those goods, and after prove that they were his, or perished in his keeping, within a year and a day, they shall be restored to him without delay; and if not, they shall remain to the king, and be seized by the sheriffs, coroners, and bailiffs, and shall be delivered to them of the town, which shall answer before the justices of the wreck belonging to the king. (4) And where wreck belongeth to another than to the king, he shall have it in like manner. (5) And he that otherwise doth, and thereof be attainted, shall be awarded to prison, and make fine at the king's will, and shall yield damages also. (6) And if a bailiff do it, and it be disallowed by the lord, and the lord will not pretend any title thereunto, the bailiff shall answer, if he have whereof; and if he have not whereof, the lord shall deliver his bailiff's body to the king.

17 Ed. 2,

Stat. 1, c. 11.

12 Ann.

Stat. 2, c. 18.

Stat. 26 Geo. 2, c. 19. [A. D. 1719, intituled] "An act for enforcing the laws against persons who shall steal or detain shipwrecked goods; and for the relief of persons suffering losses thereby."

"Whereas,

“Whereas notwithstanding the good and salutary laws now in being against plundering and destroying vessels in distress, and against taking away shipwrecked, lost or stranded goods, many wicked enormities have been committed, to the disgrace of the nation, and to the grievous damage of merchants and mariners of our own and other countries: for remedy thereof, be it enacted by the king’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal and commons in this present parliament assembled, and by the authority of the same, That Persons convicted of plundering shipwrecked goods, &c. if any person or persons shall plunder, steal, take away or destroy any goods or merchandize, or other effects, from or belonging to any ship or vessel of his majesty’s subjects, or others, which shall be in distress, or which shall be wrecked, lost, stranded or cast on shore in any part of his majesty’s dominions (whether any living creature be on board such vessel or not) or any of the furniture, tackle, apparel, provision, or part of such ship or vessel; or shall beat or wound with intent to kill and destroy, or shall otherwise wilfully obstruct the escape of any person endeavouring to save his or her life from such ship or vessel, or the wreck thereof; or if any person or persons shall put out any false light or lights with intention to bring any ship or vessel into danger; then such person or persons so offending shall be deemed guilty of felony, and being lawfully convicted thereof, shall suffer death as in cases of felony, without benefit of clergy. or of obstructing the escape of any person from a wreck, or of putting out false lights, to suffer death without clergy.

Sec. 2. “Provided always, and be it enacted by the authority aforesaid, That when goods or effects of small value shall be stranded, lost or cast on shore, and shall be stolen without circumstances of cruelty, outrage or violence; then and in such cases it shall be lawful for any person or persons to prosecute for such offence by way of indictment for petit larceny; and the offenders being thereof lawfully convicted, shall suffer such punishment as the laws in cases of petit larceny do enjoin or require. Where goods of small value shall be stolen without any circumstances of cruelty, the offender may be indicted for petit larceny.

Sec. 3. “And be it further enacted by the authority aforesaid, That it shall be lawful for any one or more of his majesty’s justices of the peace, upon information made before him or them upon oath (which oath all justices are hereby impowered to administer) of any part of the cargo or effects whatsoever belonging to any ship or vessel lost or stranded upon or near the coasts aforesaid, being unlawfully carried or conveyed away, or concealed in any house, outhouse, barn or other place, or of some reasonable cause of suspicion thereof, to issue his or their warrant or warrants for the searching of such house, out-house, barn or other place as in other cases of stolen goods; and if the same shall be found in such house, barn, or other place or places, or upon or in the custody or possession of any person or persons not legally authorized or intitled to keep and withhold the same; and the owner or occupier of such house, out-house, barn or other place, or the person or persons upon whom, or in whose custody or possession the same shall be found, shall not immediately, upon demand, deliver the same to the lawful owner or owners thereof, or to such other person or persons as shall be lawfully authorized to demand the same; or shall not give a good account, to the satisfaction of the said justice or justices, how he, she or they came by, or became possessed thereof; it shall and may be lawful to and for Justices upon information of shipwrecked goods being stolen, or concealed, to issue search warrants; and the persons in whose custody the goods shall be found, not giving a satisfactory account, such.

to be committed for six months, or until payment of treble value.

such justice or justices, upon proof of such refusal, and he and they is and are hereby required to commit the said offender or offenders to the common gaol for the space of six months, or until he, she or they shall have paid to such lawful owner or owners, or to the person or persons lawfully authorized to receive the same, treble the value of the goods or things so by him, her or them unlawfully detained.

Goods offered to sale, suspected to be shipwrecked, to be stoppt,

and notice to be given to a justice; and the person offering the same not making out his property,

the goods to be returned to the owner,

and the offender to be committed for six months, or till payment of treble value.

Persons who shall save, and carry any vessel or goods into port, &c. for the benefit of the owners, and give notice thereof,

or who shall uncover where such goods are concealed, intitled to the reward; and the quantum in case of

Sec. 4. " And be it further enacted by the authority aforesaid, That if any person or persons shall offer or expose to sale any goods or effects whatsoever belonging to any ship or vessel lost, stranded or cast on shore as aforesaid, and unlawfully taken away, or reasonably suspected so to have been; then and in every such case it shall be lawful for the person or persons to whom the same shall be so offered for sale, or any officer of the customs or excise, or any constable, headborough or tythingman, or other peace officer, to stop, take and seize the said goods and effects; and that he or they shall, with all convenient speed, carry the same, or give notice of such seizure to some one or more of his majesty's justice or justices of the peace, and if the person or persons who shall have offered the said goods or effects to sale, or some other person or persons on his, her or their behalf, shall not appear before the said justice within ten days next after such seizure, and make out, to the satisfaction of the said justice, the property of the said goods or effects to be in him, her or them, or in the person or persons by whom he, she or they, was or were employed to sell the same; then the said goods or effects shall, by order of the said justice, be forthwith delivered over to or for the use of the rightful owner or owners thereof, upon payment of a reasonable reward for such seizure (to be ascertained by the said justice) to the person who seized the same; and such justice shall and may commit the person or persons who shall so have offered or exposed the said goods or things to sale as aforesaid to the common gaol for the space of six months, or until he, she or they, shall have paid to such lawful owner or owners, or to the person or persons lawfully authorized to receive the same, treble the value of the said goods or effects so by him, her or them unlawfully offered to sale as aforesaid.

Sec. 5. " And be it further enacted by the authority aforesaid, That in case any person or persons not employed by the master, mariners or owners, or other persons unlawfully authorized, in the salvage of any ship or vessel, or the cargo or provision thereof, shall, in the absence of persons so employed or authorized, save any such ship, vessel, goods or effects, and cause the same to be carried, for the benefit of the owners or proprietors, into port, or to any near adjoining custom-house or other place of safe custody, immediately giving notice thereof to some justice of the peace, magistrate, or custom-house or excise officer, or shall discover to any such magistrate or officer where any such goods or effects are wrongfully brought, sold or concealed, then such person or persons shall be intitled to a reasonable reward for such services, to be paid by the masters or owners of such vessels or goods, and to be adjusted in case of disagreement about the *quantum*, in like manner as the salvage is to be adjusted and paid by virtue of the statute made in the twelfth year of the reign

of

of her late majesty queen *Anne*, intituled, *An Act for the preserving all such ships and goods thereof which have happened to be forced on shore, or stranded upon the coasts of this kingdom, or any other of her majesty's dominions*, or else in the manner herein after prescribed, as the case shall require, disagreement is to be adjusted according to 12 Ann. II. 2, c. 18.

Sect. 6. " And be it further enacted by the authority aforesaid, That for the better ascertaining the salvage to be paid in pursuance of this present act, and the act before mentioned, and for the more effectual putting the same acts in execution, the justice of the peace, mayor, bailiff, collector of the customs, or chief-constable, who shall be nearest to the place where any ship, goods or effects shall be stranded or cast away, shall forthwith give publick notice for a meeting to be held as soon as possible of the sheriff or his deputy, the justices of the peace, mayors, or other chief magistrates of towns corporate, coroners and commissioners of the land-tax, or any five or more of them, who are hereby required and impowered to give aid in the execution of this and the said former act, and to imploy proper persons for the saving of ships in distress, and such ships, vessels and effects, as shall be stranded or cast away; and also to examine persons upon oath touching or concerning the same, or the salvage thereof, and to adjust the *quantum* of such salvage, and distribute the same among the persons concerned in such salvage, in case of disagreement among the parties, or the said persons, and that every such sheriff, justice of the peace, mayor, chief magistrate, coroner, lord of a manor, under sheriff, or commissioner of the land-tax, attending and acting at such meeting, shall be paid fourance. shillings a day for his expences in such attendance out of the goods and effects saved by their care or direction. Where any vessel or effects shall be stranded, publick notice to be given for a meeting of the sheriff, justices and magistrates, &c. who are to aid in saving the vessel and goods, &c. and to adjust the salvage; 4s. a day allowed for their attend.

Sect. 7. " Provided always, and be it further enacted by the authority aforesaid, That if the charges and rewards for salvage, directed to be paid by the said act of the twelfth year of the reign of her said late majesty queen *Anne*, and by this present act, shall not be fully paid, or sufficient security given for the same within forty days next after the said services performed, then and in such case it shall be lawful for the officer of the customs concerned in such salvage, to borrow or raise so much money as shall be sufficient to satisfy and pay such charges and rewards, or any part thereof then remaining unpaid, or not secured as aforesaid, by or upon one or more bill or bills of sale, under his hand and seal, of the ship or vessel, or cargo saved, or such part thereof as shall be sufficient, redeemable nevertheless upon payment of the principal sum so borrowed, and interest for the same after the rate of four pounds *per centum per annum*. If the salvage be not paid, the officer of the customs may raise the same by a bill of sale of the vessel or cargo, which may be redeemed, upon payment of principal and interest.

Sect. 8. " And be it further enacted by the authority aforesaid, That if oath shall be made before any magistrate, lawfully impowered to take the same, of any such plunder or theft, and the examination in writing thereupon taken shall be delivered to the clerk of the peace of the county, riding or division wherein such fact shall be committed, or to his deputy; or if oath shall be made before any such magistrate of the breaking any ship, contrary to the aforesaid act made in the twelfth year of the reign of her said late majesty queen *Anne*, and the examination in writing thereupon taken shall be delivered to such clerk of the peace, or his deputy; then such clerk Where oath shall be made of plunder or theft, or of breaking a ship, contrary to 12 Ann. II. 2, c. 18, and the examination shall be delivered to the

clerk of the
peace, he is to
prosecute
the offender;

and the
charges to be
paid by the
treasurer of
the county.

Clerk of the
peace neglect-
ing to prose-
cute, forfeits
100 l.

Officers for
putting this
and 12 Ann.
ft. 2, c. 18,
in execution.

3 Geo. 1, c.
31.

Officers for
putting this
and 12 Ann.
in execution
within the
liberty of the
Cinque-ports,
&c.

of the peace shall cause the offender or offenders in and of the said cases to be orthwi th prosecuted for the same, either in the county where the fact shall be committed, or in any county next adjoining; in which adjoining county any indictment may be laid by any other prosecutor; and if the fact be committed in *Wales*, then the prosecution shall or may be carried on in the next adjoining *English* county; and the necessary charges of such prosecutions by the clerk of the peace shall be paid by the treasurer of the county, riding or division where the fact shall be committed, to such amount as the justices of the peace in their general or quarter sessions shall order and ascertain the same; and if such clerk of the peace shall neglect or refuse to carry on such prosecution in due manner, he shall forfeit one hundred pounds for every such offence, to any person or persons who shall sue for the same by action of debt, bill, plaint or information, in any of his majesty's courts of record at *Westminster*; in which action no essoin, protection, wager of law, or more than one imparlance shall be allowed.

Sec. 9. " And be it further enacted by the authority aforesaid, That the commissioners of the land-tax, the deputy sheriff, the coroner, and the officers of excise in each county, riding and division, shall be proper officers for putting in execution this present act, and the said act made in the twelfth year of the reign of her late majesty queen *Anne*, together with those therein respectively named for that purpose.

Sect. 10. " And whereas by an act made in the third year of the reign of his late majesty king *George* the first, intituled, *An act for the better regulating of pilots for the conducting of ships and vessels from Dover, Deal, and the Isle of Thanet, up the rivers of Thames and Medway*, it is enacted, That the lord-warden of the Cinque-ports for the time being shall nominate and appoint, by instrument under his hand and seal, three or more substantial persons in each of the Cinque-ports, two ancient towns and their members, to adjust and determine, within the space of twelve hours, differences which shall or may arise within the jurisdiction of the Cinque-ports relating to the salvage of anchors and cables from which vessels shall or may be forced by extremity of weather: Now it is hereby enacted That the lord-warden of the Cinque-ports for the time being, and the lieutenant of *Dover Castle* for the time being, and the deputy warden of the Cinque-ports for the time being, and the judge official and commissary of the court of Admiralty of the Cinque-ports, two ancient towns, and the members thereof, for the time being, and all and every of them, and all and every other person and persons appointed or to be appointed by the lord-warden of the Cinque-ports for the time being, pursuant to the said act made in the third year of his late majesty's reign, shall be the persons to put in execution, within the liberty and jurisdiction of the Cinque-ports, two ancient towns and their members, all the powers and authorities given and granted in and by this act, and in and by the before mentioned act of parliament made in the twelfth year of her said late majesty queen *Anne*; and also in and by the said act made in the fourth year of the reign of his late majesty king *George* the first; and also shall and may execute, perform and do, within the jurisdictions aforesaid, all the acts, matters

and things contained in this and the before mentioned statutes, in like and as full and ample manner, to all intents and purposes, as any justice or justices of peace, or any other person or persons, are by this and the said acts appointed or authorized to do in any other part of the kingdom.

Señ. 11. “ And be it further enacted by the authority aforesaid, That if any sheriff or his deputy, justice of the peace, mayor or other magistrate, coroner, lord of a manor, commissioner of the land-tax, chief constable or petty constable, or other peace officer, or any custom-house or excise officer, or other person lawfully authorized, shall be assaulted, beaten and wounded, for or on account of the exercise of his or their duty, in or concerning the salvage or preservation of any ship or vessel in distress, or of any ship or vessel, goods or effects, stranded, wrecked, or cast on shore, or lying under water, in any of his majesty’s dominions, then any person or persons so assaulting, beating and wounding, shall upon trial and conviction, by indictment at the assizes, or general gaol delivery, or at the general or quarter sessions for the county, riding or division, where such offence shall be committed, be transported for seven years to some of his majesty’s colonies in *America*, and shall be subject to such subsequent punishment, in case of return before that time, as other persons under sentence of transportation are by the law subjected unto.

Persons convicted of assaulting any magistrate or officer, &c. in the salvage of any vessel or goods, to be transported for seven years

Señ. 12. “ And be it further enacted by the authority aforesaid, That it shall be lawful for any one or more of his majesty’s justices of the peace, in case of need, and in the absence of the high sheriff, to take sufficient power of the county, to redress all unjust violence, and duly to enforce the execution of this act.

Justice in the absence of the sheriff may take a sufficient force to repress violence, &c.

Señ. 13. “ And to prevent confusion among persons assembled to save any ship, vessel, goods or effects as aforesaid, either for want of proper orders, or by contradictory orders; be it further enacted, That all persons so assembled shall conform in the first place to the orders of the master or other officers or owners, or other persons employed by them; and for want of their presence or directions, then in the next place to the orders of persons authorized by this act, or the aforesaid act of queen *Anne*, in the like manner, in the following subordination, as any of the said persons shall happen to be present; that is to say, in the first place, to the orders of any officer or officers of the customs; then of any officer or officers of the excise; then of the sheriff or his deputy; then of any justice or justices of the peace; then of the mayor or chief magistrate of any corporation; then of the coroner; then of any commissioners of the land tax; then of any chief constable; then of any petty constable or other peace officers: and any person whatsoever acting knowingly and wilfully contrary to such orders, shall forfeit any sum not exceeding five pounds, to be levied by warrant of one justice of the peace; and in case of non-payment the offender shall be committed to the house of correction for any time not exceeding three months.

Persons empowered to give orders, where any shall be assembled in case of a shipwreck, &c.

Persons acting contrary to orders forfeit 5l.

Señ. 14. “ Provided always, and it is hereby enacted, That neither this act, nor any thing herein contained, shall any way extend to deprive or prejudice his royal majesty, his heirs or successors, or any claiming under

Rights of the crown, &c. reserved.

them, or any patentee or grantee of the crown, or any lord or lords of any manor or manors, or other person whomsoever, of or in relation to any right which they or any of them have or may have or lawfully claim to any wreck or wrecks, or any goods which are or shall be *flotsam*, *jetsam* or *lagan*, but that such respective rights shall be enjoyed in as full, ample and beneficial a manner, in every respect, as if this act had never been made.

*Examina-
tion on oath to be
taken of the
ship's name,
cargo and
owners, &c.*

Sett. 15. " And be it further enacted by the authority aforesaid, That the officer of the customs who shall act in the preserving of any ship or vessel in distress, or the cargo thereof, shall, as soon as conveniently may be, cause or procure all persons belonging to the said ship or vessel, and others who can give any account thereof, or of the cargo thereof, to be examined upon oath before some justice of the peace, as to the name or description of the said ship or vessel, and the names of the master, commander, or chief officer and owners thereof, and of the owners of the said cargo and of the ports or places from or to which the said ship or vessel was bound, and the occasion of the said ship's distress; which examination, the said justices are hereby required to take down in writing, and they shall deliver a true copy thereof, together with a copy of the said account of the goods, to the said officer of the customs, who shall forthwith transmit the same to the secretary of the admiralty for the time being, who shall publish or cause to be published in the next *London Gazette*, so much thereof as shall or may be necessary for the information of the persons interested or concerned therein.

*The acts
12 Ann. st.
2, c. 18, and
4 Geo. 1, c.
12, to be in
force where
not altered by
this act.*

Sett. 16. " And it be further enacted by the authority aforesaid, That the before mentioned act of parliament made in the twelfth year of her said late majesty queen *Anne*; and also an act made in the fourth year of the reign of his late majesty king *George* the first; for enforcing and making perpetual the before mentioned act, and for inflicting the punishment of death on such as shall wilfully burn or destroy ships, shall in all things remain in full force, save only so far as the same are altered or changed by this present act.

*Commence-
ment of this
act.*

Sett. 17. " And be it further enacted by the authority aforesaid, That this act shall take place from the twenty-ninth day of *September* in the year our Lord one thousand seven hundred and fifty-three.

*Not to extend
to Scotland.*

Sett. 18. " Provided, That nothing in this act contained shall extend or be construed to extend to that part of *Great Britain* called *Scotland*."

INDEX to and TABLE

OF THE

PRINCIPAL MATTERS in VOL. III.

LABOURERS. See *Servants*.
Landlord and Tenant. See *Distress*.

Land-Tax.

History of _____ page 1—5

Larceny.

Definition and several kinds of larceny 5, 6
Stat. 8 Hen. 6, c. 12. Embezzling of a record,
whereby any judgment shall be reversed, is
felony _____ 6
Stat. 21 Hen. 8, c. 7. Servants embezzling their
masters goods to the value of 40s. or above,
shall be punished as felons, but not to extend
to apprentices within 18 years of age 7
Stat. 1 Ed. 6, c. 12. Persons stealing horses, &c.
are ousted of clergy _____ 8
Stat. 5 & 6 Ed. 6, c. 9. No person robbing any
house, &c. shall have the benefit of his
clergy _____ ib.
Burglary, the owner, &c. being in another part
of the house, or asleep—Burglary in a tent
or booth, in a fair or market _____ 10
Stat. 8 Eliz. c. 4. He that taketh away privily
from the person of another, money or goods
not knowing thereof, shall not have his
clergy, &c. _____ ib.
Where one shall be arraigned for a former of-
fence having his clergy for a latter _____ 11
Stat. 39 Eliz. c. 15. He shall not have his clergy
that robbeth a house in the day time of the
value of five shillings _____ 12
Stat. 3 Will. & M. c. 9. Persons indicted for a
crime, of which being convicted they should
not have their clergy, if they stand mute, &c.
shall not have it _____ ib.
Persons indicted of a crime in a wrong county,
if they stand mute, &c. shall not have it _____

Buyers of stolen goods reputed accessories to
felony _____ 13
Stealing goods from lodgings felony—Wo-
men convicted of crimes for which men have
their clergy, upon prayer punished as men ib.
Where a person has had his clergy in another
county, clerk of the crown, &c. shall certify
it _____ 14
Stat. 12 Ann. st. 1, c. 7. Persons stealing to the
value of 40s. being in a dwelling house, &c.
though such house, &c. be not broken, &c. and
being thereof convicted, shall be debarred the
benefit of clergy—Not to extend to appren-
tices under 15 years of age _____ ib.
Entering into a house without breaking it, or
being there committing felony, and break-
ing the house in the night to get out, shall
be burglary _____ 15
Stat. 4 Geo. 1, c. 11. Persons convicted of of-
fences within the benefit of clergy, except,
&c. shall be sent to the plantations for seven
years—The court before whom convicted
to contract for their transportation 15, 16
Persons convicted of offences, for which they
are excluded the benefit of clergy, and also
receivers and buyers of stolen goods, may be
transported for fourteen years _____ 16
Returning before the expiration of the term
shall be punished with death—The king
may pardon such transportation, the offender
paying his owner such sum as two justices
shall adjudge—Service of the term shall
have the effect of a pardon _____ ib.
Contractors to give security for the transpor-
tation of such offenders, and procure certifi-
cates from the governor, &c. where landed,
and that they shall not be suffered to return
by his default _____ 16, 17

Persons

Persons taking rewards for helping to stolen goods unless they cause the felon to be brought to trial, shall be guilty of felony 17
 Merchants or others, may contract with persons of the age of fifteen, and under twenty-one to serve them in America for eight years—Provided such a person acknowledge his consent before a justice of peace, and sign the same with his approbation—Such contract, &c. to be certified to the quarter sessions — 17, 18
 Stat. 4 Geo. 2, c. 32. Stealers of lead, iron bars, &c. fixed to houses, or any fences belonging thereto, shall be guilty of felony, and be transported for 7 years — 18
 Stat. 24 Geo. 2, c. 45. Persons convicted of theft of 40s. value on board any vessel, or on any wharf, or assisting therein, &c. excluded from the benefit of clergy — 19
 Stat. 25 Geo. 2, c. 36. The person advertising a reward for the return of things stolen or lost, &c. and the printer, to forfeit 50l. 19, 20
 Stat. 29 Geo. 2, c. 30. Buyers or receivers of any of the materials herein mentioned, knowing the same to be stolen, or unlawfully come by, &c. if convicted, to be transported for 14 years — 20, 21
 Where there is cause of suspicion, justice to issue a search warrant, and the materials, and party with whom the same are found, to be carried before two justices, &c.—Party not accounting satisfactorily, deemed guilty of a misdemeanor—Suspected persons with any of the said materials in the night time, may be apprehended by the parish officers or watchmen, and carried before two justices, &c. and not accounting satisfactorily, deemed guilty of a misdemeanor—In which case, the materials to be deposited with the church-wardens, &c.—Public notice by advertisement to be given, and owner proving his property is to have them, otherwise they are to be sold, and the money divided between officer and poor — 21, 22
 Persons to whom any such materials shall be brought, to be sold, or pawned, may in any suspected case, stop and carry the party before a justice, &c. upon proof of such reasonable cause of suspicion, he is guilty of a misdemeanor — 22
 Persons convicted of a misdemeanor in having in their possession any of the said materials, &c. and not accounting satisfactorily for the same, to forfeit for the first offence 40s. for the second, 4l. and for every subsequent one, 6l. and being guilty of a misdemeanor in not carrying suspected persons before a justice, to forfeit for the first offence 20s. for the second 40s. and for every subsequent 4l.—Forfeitures how to be levied and applied—For want of distress, offender to be committed 23

Convictions to be certified to the quarter sessions, in the form following—Said conviction not to be quashed or removed by certiorari—Felon convicting the buyers or receivers of such stolen materials, is intitled to his majesty's pardon; and convicting any of a misdemeanor, in not apprehending, &c.—Offender offering to sell or pawn the same, is discharged from prosecution for such felony—Limitation of actions—General issue—Tresple costs—Former laws not vacated, nor offenders liable to double punishment — 24, 25

Stat. 2 Geo. 3, c. 28. Persons using, letting out to hire, lending, or navigating, &c. bunt boats, or other boats, on the river, for the purpose of selling liquors, slops, tobacco, brooms, gingerbread, or garden ware, &c. except such boats as shall be entered at the office of the Trinity house, &c. and persons taking in exchange, or by way of barter, or unlawfully receiving, &c. any ropes, cordage, goods, stores, or merchandize, of vessels in the river; being convicted before a justice shall be deemed guilty of a misdemeanor; and the boat, with those on board, may be seized and searched, and the persons conveyed before a justice; and the boat, with her furniture and lading, upon such conviction shall be forfeited — 26

Bunt-boats, and others, used upon the river for the purposes aforesaid, are to be entered by the owners at the office of the Trinity-house in Water-Lane, and a number thereupon is to be given them, to be marked, with their christian and surnames and place of abode, on the said boats, as the Trinity company shall direct — 26, 27

A fresh entry is to be made, and every thing else to be done, as above directed, by the new owner, every time the property of such boat shall be altered—The said company is to receive and register all such entries, and deliver out numbers to be marked on the boats, upon being paid 5s. for the same; and they are to make orders, &c. for ascertaining the manner in which the number and the names and abode of the owners, are to be marked on the boat, and on what part thereof the same shall be done, and how renewed, and kept legible; which, after publication in the London Gazette, and copies thereof affixed at the proper places, shall be observed by the owners of such boats — 27

The master and wardens of the said company, or persons deputed by them, also all owners or masters of vessels in the river, or persons authorized by seven or more of them, may stop and search any boat suspected to have any ropes and stores, or other materials, &c. stolen,

- stolen, or unlawfully procured from out of vessels in the river; and carry the persons suspected of being concerned therein before a justice, and they not giving a satisfactory account how they came by the same, shall be adjudged guilty of a misdemeanor; and the boat and loading, &c. shall be forfeited — 28
- Constables and beadies and watchmen when on duty, may seize all ropes, stores, or other goods suspected to be stolen, or unlawfully procured from out of vessels in the river, and carry the persons concerned therein before a justice, and they, not giving a satisfactory account how they came by the same, shall be adjudged guilty of a misdemeanor — 28, 29
- Justices upon information on oath of a suspicion of the concealment of stolen goods or merchandizes, may grant a search warrant; and the goods thereupon found, are to be secured; and the persons of the house, &c. are to be brought before a justice; and they, not giving a satisfactory account how they came by the same, shall be adjudged guilty of a misdemeanor — 29
- Where persons shall be convicted of either of the last-mentioned misdemeanors, the justice may cause the goods to be deposited with the churchwardens, &c. who are to advertise the same; if within the bills of mortality; and if not, notice is to be given by the public crier, and also affixed on the church or chapel door, that the owners may come and make their claim, within thirty days; and they proving their property therein, the justice shall order restitution thereof, upon their paying reasonable charges, and compensation to the persons giving information; but if no such proof be made, the goods, &c. shall be sold by the churchwardens; and the money, after deducting the charges aforesaid, is to go, one moiety to the informer, and the other to the poor of the parish — 29, 30
- Persons to whom any stores or ship goods, &c. suspected to be stolen, &c. shall be offered to be sold, pawned, or delivered, may stop the same, and carry the parties before a justice; and the goods shall be deposited and disposed of; and the parties dealt with as if they had been apprehended by the constable, &c. — 30
- Persons adjudged guilty of any of the misdemeanors aforesaid, forfeit for the first offence 40s. and for the second and every subsequent offence 4l. to be levied by distress and sale; one moiety to go to the apprehender or informer, and the other to the master of the Trinity-house for the use of their poor; and for want of distress, the offender to be committed, for the first offence one month; for the second two months; and for every other offence, till discharged by the order of court of sessions — 30, 31
- Convictions to be certified to the next quarter-sessions, and filed there—Form of conviction — Conviction not to be quashed for want of form; not removeable by certiorari — 31
- Persons convicted of knowingly buying or receiving stolen goods from vessels in the river; or of privately buying or receiving at any time any such goods clandestinely, or by suffering any door, window, or shutter at night to be left open or unfastened for that purpose; shall be transported for fourteen years — 31, 32
- Persons convicted of cutting or spoiling any cordage, cable, buoys, buoy-ropes, head-fast, or other fast, or ropes of vessels, at anchor or moorings, in the river, with intent to steal the same, shall be transported, together with their aids therein, for seven years — 32
- Any person out of prison concerned in stealing or unlawfully receiving goods or merchandize from any vessel in the river, who shall discover and convict two others of the like offence, shall be intitled to his majesty's pardon — ib.
- Persons rowing or navigating such boats, not being entered, marked, and numbered according to the order of the Trinity company; or having a false or fictitious number or mark, forfeit, on conviction before a justice, 40s. one moiety to the informer, and the other to the Trinity company for the use of their poor—Upon discovery of such offence, the boat and tackle, &c. may be seized, and within forty-eight hours after information is to be given to a justice, who is to hear and determine thereupon—If the forfeiture be not paid within twenty-four hours, the same shall be raised by sale of the boat, &c. by warrant of the justice — 32, 33
- Upon complaint to the master and wardens of the company, of any thefts or illegal practices being carried on in any boat, or suspected to be carried on, they may summon the owner to appear, and inquire into such complaint in a summary way; and, on conviction, may take away his number, and refuse to enter any boat of his for the future — 33
- Where, on conviction, the forfeiture of a boat, &c. is incurred, and no further provision made concerning the same, the justice by his warrant, may order the same to be burnt within six days—Any persons may apprehend an offender, and deliver him over to a constable, to be carried before a justice—Persons obstructing the execution of this act, being convicted at the quarter-sessions, shall be transported for seven years—Any member of the

the corporation, or inhabitant of the place, where the offence is committed, may be admitted to give evidence — 34
 Justices to administer oaths gratis—Limitation of actions—General issue—Treble costs—Public act. — 35
 Of what nature the things stolen must be to constitute the offence, felony — 35, 37
 How far the goods ought to belong to another, and what shall be deemed a felonious and fraudulent taking, and carrying away 37, 39
 Where the offender is or is not excluded his clergy, or is to be transported — 39, 40

Leather.

Stat. 1 Jac. 1, c. 22, The duty of tanners, curriers, shoemakers, and of others cutting of leather—The causes that former statutes made against the abuses of tanners, curriers, &c. have not been performed—The penalty for galling or watering of a hide, or selling a rotten hide—Killing of calves under five weeks old — 41
 No butcher shall be a tanner—Who may be a tanner—No tanner shall be a cutter of leather—Who may buy rough hides, or calveskins—Forestalling of hides — 42
 Who may buy tanned leather not wrought—Buying leather at Leaden-hall in London—Sadlers and girdlers may sell their necks, &c.—How hides shall be used in tanning — 43
 Raising of hides with mixtures—Sale of tanned leather red and unwrought—Leather not sufficiently tanned or dried — 44
 Crafty means to overhasten the tanning of leather—Leather shall not take unkind heats—There shall be no regrating or ingrossing of oaken bark—At what time oaken trees to be barked shall be felled—When purveyors shall sell timber — 45
 No taking of lops—Currying of leather—The currier's forfeiture for misusing of leather—Who shall curry leather in or near London — 46
 Curried leather shall be searched and sealed—A currier shall not be a tanner, shoemaker, butcher, &c.—Within what time leather shall be curried—Curried leather shall be searched and sealed — 47
 The cordwainer's duty in making of boots, shoes, buskins, slippers, &c.—No sale, or shewing of boots, shoes, &c. upon the Sunday — 48
 Wares made and tanned leather, in or near London, shall be searched—Wares of leather that be insufficient, may be seized and carried away—Who may search and be searched—Sellers of leather shall be appointed by the mayor, &c. of London, and their au-

thority—Searching and sealing of leather in all other parts of the realm — 49
 Six triers of leather shall be appointed in London—Triers of tanned leather in other places — 50
 The forfeiture of chief officers for not appointing of triers—The searchers and sealers of leather shall be changed yearly in London—The forfeiture of a searcher or sealer omitting his duty, or taking of bribes—Leather brought to Leaden-hall to be viewed and registred 51
 Leather bought in Bartholomew fair, or Southwark market—Searching and sealing of leather in or near London—The penalty for denying of search or seizing of insufficient wares—Registring of leather sold and bought, and the fees thereof — 52
 The penalty of selling of tanned leather not registred—The penalty for buying of leather not sealed or registred—The penalty of the currier or cordwainer omitting his duty—No selling of wares in London, but in open shop, fair or market — 53
 All cutters of leather in or near London shall be under search—Who shall have the money forfeited by this statute—How the wares made of tanned leather, forfeited in London, shall be distributed — 54
 How the wares made of tanned leather, forfeited in other places shall be distributed—Forfeited ware shall not be sold to him that will sell it again—The authority of the officers in Oxford and Cambridge, for search of leather, reserved—What shall be reputed leather—What officer may inquire of, and punish the offences aforesaid — 55
 The steward's authority of a manor of the king's—Dry currying and frizing of leather, and who may use it—This act shall extend to Wales—The forfeiture of customers, &c. suffering leather to be transported, and not to seize or disclose it — 56
 This act shall not extend to Scottish hides brought to Berwick—Licences to dispense with the offences prohibited by this act, shall be void—Continued until the end of the next session of parliament — 57
 Stat. 4 Jac. 1, c. 6. Sheepskins have not been appointed by any law to be sealed—There shall be no penalty for housing, buying or selling sheeps-skins unsealed — 58
 Stat. 13 & 14 Car. 2, c. 7. What skins or hides tanned may not be transported—Tanned leather may be transported into Scotland, &c.—What leather must be bought only in open fairs or markets for selling leather—Penalty for transportation of any leather or raw hides — 59
 Who may search and seize leather or hides intended to be transported—Shaving of leather

I N D E X.

ther by tanners—The penalty—Leaden-hall, London—How the penalties shall be recovered—Transportation of leather declared a common nuisance—Leather for necessary use of ships in voyages ——— 60

Artificers dealing in cutting of leather in London, or within three miles thereof—Leather used in London, or within three miles, to be searched and allowed by the wardens of the curriers there—Penalties for opposing the searching ——— 61

Stat. 20 Car. 2, c. 5. After the 25th of March 1668, all sorts of leather may be exported 62

Stat. 1 Will. & Ma. Sess. 1, c. 33. What shall be adjudged ware within 1 Jac. 1, c. 22, s. 29.—The power of the master, &c.—Red tanned leather how bought and sold—Leather may be bought and sold by weight — 63

Stat. 9 Ann. c. 11. Mayors, bailiffs, &c. and all tanners, &c. are to execute, and comply with the stat. 1 Jac. 1, c. 22.—Penalty on gashing hides or skins—Penalty on shaving hides, before the same be thoroughly tanned 64

Two justices or more, of the place, may hear and determine upon this act—Appeal to quarter-sessions final ——— 65

Liberty granted to buy, cut, and sell leather, curried or uncurried, in small pieces—Persons unqualified not hereby licensed to exercise the shoemakers trade; nor shoemakers to act in any place against law—Penalty on curriers refusing to curry any leather within a limited time ——— 66

Justices may mitigate penalties—Appeal from them to the quarter-sessions—Two clauses in the act 1 Jac. 1, repealed—Privileges of the curriers company not hereby lessened 67

Lecturer.

Right and manner of appointing a lecturer 68

Stat. 13 & 14 Car. 2, c. 4. Lectures in cathedral or collegiate churches ——— 69

The penalty upon persons disabled, that preach—Common prayer to be read before every lecture, and the lecturer to be present—Proviso for sermons and lectures in the universities ——— 70

Lect.

Meaning of the word, and offences cognizable therein ——— 70, 71

Letter. See *Black-Act*.

Lewdness.

How punishable ——— 72

Libel.

What it is ——— 72, 73

What degree of defamation will amount to a libel; and what certainty is requisite in the matter and application of a libel — 73, 77

Whether proceedings in a court of justice are libellous; and whether any thing of this kind can be justified ——— 77, 78

Who shall be deemed the author or composer of a libel; who the publisher; and how the offenders shall be punished ——— 78, 81

Linen-Cloth.

Stat. 1 Eliz. c. 12. The inconveniencies ensuing the deceitful using of linen cloth—The penalty for stretching or impairing of linen cloth ——— 81

What justices may hear and determine the offences aforesaid—In what sort he that seizeth an offender's cloth, shall pursue his suit against him—Certificate of the estreat into the exchequer—Stat. 15 Car. 2, c. 15. The inconvenience by importing foreign materials of linen and tapistry-hangings — 82

Encouragement of English manufactures—In the occupation of dressing and using of hemp and flax—Making of tapistry-hangings—Foreigners may use those trades, and enjoy all privileges as natural-born subjects—Oath of allegiance and supremacy ——— 83

Stat. 17 Geo. 2, c. 30. Penalty on putting counterfeit stamps on foreign linens; and packing up, or exposing them to sale—Penalty on fixing counterfeit stamps on *British* or *Irish* linens; and packing up, or exposing them to sale—Offenders to be convicted on oath of one witness before a justice—Penalties to be recovered by distress and sale—For want of distress offender to suffer six months imprisonment ——— 84

Penalties to go to the informer, deducting 2s. in the pound for the constable — 85

Stat. 18 Geo. 2, c. 27. Whoever shall steal linen, &c. laid to be printed, bleached, &c. or shall aid or hire another to commit such offence, shall be guilty of felony, and suffer death—The court may order such offenders to be transported for 14 years—Such offenders breaking gaol, or returning, to suffer death ——— 85, 86

Ling. See *Burning*.

Loom-lace. See *Buttons*.

Lord's Day.

Stat. 1 Car. 1, c. 1. There shall be no assemblies for unlawful pastimes on the Lord's day. Unlawful meetings and pastimes on the Lord's day forbidden—Every person using any unlawful pastimes on the Lord's day, shall forfeit 3s. 4d. to the poor of the parish—After conviction by warrant from a justice, &c. the

constables, &c. may levy the penalty, &c.
 General issue—Limitation of this action—
 The ecclesiastical jurisdiction not abridged 83
 Stat. 29 Car. 2, c. 7. Tradesmen, artificers and
 labourers—None shall cry or expose to sale
 wares—Drovers, horse-courfers, waggon-
 ers, butchers, and higlers, boats and barges 88
 In what manner the conviction shall be—The
 penalty how to be levied—In case of insuf-
 ficiency, the offender shall be set in the
 stocks—The forfeitures how to be disposed
 of—A provision for private families, vic-
 tualling-houses, &c.—The prosecution to
 be within ten days—The hundred not re-
 sponsible for robberies committed on the Lord's
 day; but shall make fresh suit after the of-
 fenders 89
 Service of process on the Lord's day shall be
 void 90
 Lotteries. See *Gaming*.
 Low wines. See *Excise*.
 Low bells. See *Game*.

Lunaticks.

Four kinds of lunaticks 90
 How ideots and lunaticks are to be found such
 91, 92
 Who hath an interest in, and jurisdiction over
 lunaticks 93
 Stat. 17 Ed. 2, ft. 1, c. 9. King's prerogative
 in the custody of lunaticks ib.
 Stat. 17 Ed. 2, ft. 1, c. 10. King's prerogative
 in the preservation of the lands of lunaticks ib.
 Stat. 15 Geo. 2, c. 30. Lunatick not to marry
 till declared of sane mind by the lord-chan-
 cellor, &c. 94
 Stat. 12 Geo. 2, c. 5. Lunaticks to be con-
 fined by warrant of justices—Goods and
 estates of lunaticks to be seized, to pay the
 charge of their maintenance, otherwise at the
 charge of the parish—Proviso—Persons
 aggrieved may appeal to the next general or
 quarter sessions 94, 95
 Stat. 29 Geo. 2, c. 31. Guardians, &c. of mi-
 nors, lunaticks, and femes covert, in order
 to the surrender and renewal of leases, may
 apply to the court of chancery, &c. in a sum-
 mary way; and by order of court, may sur-
 render by deed such leases, and renew the
 same, as the court shall direct 95, 96
 Fine and charges attending the renewal, to be
 charged on the estate, or the leasehold pre-
 mises, as the court shall direct—Fine for
 femes covert to be charged on the leasehold
 premises—New leases to be to the same
 uses as the former—Surrender and re-
 newal of such leases deemed valid 96
 Lurcher. See *Game*.
 Lutestrings. See *Silk*.

Madder.

Stat. 31 Geo. 2, c. 35. Persons convicted of
 stealing or destroying madder roots, are, for
 the first offence to make satisfaction for the
 damage; and pay to the overseers of the poor
 of the parish, a fine not exceeding 10s. or
 be committed to the house of correction for
 one month; and on conviction of a like of-
 fence, the second time, are to be committed
 for three months 97
 Prosecution to be within 30 days after the of-
 fence ib.
 Madmen. See *Lunaticks*.

Maim.

Definition of, and how punished — 98
 No pardon but by act of parliament—A par-
 don granted to any one that was guilty of the
 fact, and will make a discovery of any others
 besides those mentioned in the act 100
 Stat. 22 & 23 Car. 2, c. 1. Malicious maiming
 made felony 101
 Slitting a man's nose is within this act ib.
 Mainprize. See *Bail*.

Maintenance.

Definition of — 102
 What shall be deemed acts of maintenance;
 and in what respects some such acts may be
 justified 102—105
 How maintenance is restrained and punished by
 the common law, and by the statute — 105
 Offence of buying or selling pretended titles
 107, 108
 Malt. See *Excise*.
 Manslaughter. See *Homicide*.
 Mariners. See *Seamen*.

Marriage.

Stat. 26 Geo. 2, c. 33. Publication of banns
 —Minister to sign the publication; and
 the marriage to be solemnized in one of the
 churches where the banns have been published
 109
 Notice of the names, places of abode, and time
 of residence of the parties to be given to the
 minister seven days before publication of
 banns—Minister not punishable for solemn-
 izing marriage after banns published, where
 the parents or guardians give no notice of
 dissent; but where such dissent shall be given,
 publication of banns to be void — 109, 110
 Licences to be granted to solemnize matrimony
 in the church or chapel of such parish only
 where one of the parties shall have resided for
 four

four weeks before, &c.—Places which may be deemed extraparochial by this act—Archbishop of Canterbury's right to grant special licences reserved 110
 Surrogate deputed to grant licences, to take an oath of office, and give security—Persons convicted of solemnizing matrimony without banns or licence, or in any other place, &c. except by special licence,—to be transported—and the marriages to be null—Prosecution for the same to be commenced within three years 110, 111
 Proof of the parties dwelling in the parishes, &c. where marriages shall have been solemnized, not necessary to the validity of such marriage 111
 Marriages solemnized by licence without consent of the parents or guardians, where either of the parties (not being a widower or widow) shall be under age, void—Where the guardians or mother shall be non compos mentis, or in parts beyond the seas, or shall unreasonably withhold their consent, the parties may apply to the lord-chancellor, &c. and being approved by order of the court, shall be effectual—No suit to be in the ecclesiastical court to compel a marriage in facie ecclesiæ, by reason of any contract 111, 112
 Churchwardens to provide books in which are to be registered all marriages and banns;—the same to be signed by the minister;—and the books to belong to the parish, and to be kept for public use—Marriages to be solemnized in the presence of two witnesses, besides the minister, and to be registered, and signed by the minister, parties and witnesses, 113, 114
 Persons convicted of making a false entry in the said register, or of forging, &c. any such entry, or of forging, &c. any licence,—or of destroying with an ill intent such register, to suffer death—Marriages of the royal family, and of Quakers and Jews, and of persons in Scotland, or beyond the seas, excepted—This act to be read in all parish-churches and public chapels 113, 114

Master. See *Servants, Apprentice.*

Measures. See *Weights.*

Metal. See *Pewter.*

Metheglin. See *Excise.*

Militia.

The king to issue forth commissions of lieutenancy for the respective counties; the lord lieutenants empowered thereupon to assemble and arm the militia, and appoint deputy lieutenants, being first approved of by his majesty; and grant commissions to a proper

number of officers, before the third meetings of the deputy lieutenants, for choosing the men by lot:—Their names to be certified to his majesty within a month after; and if he shall signify his disapprobation of any of them, no commission is to be granted to such 115

The lord-lieutenant being absent out of Great Britain, the king may authorize the deputy lieutenants to fill up vacant commissions. Commissions of lieutenancy, deputations, and other commissions already granted, to stand good; if the parties be duly qualified—Deputation of deputy lieutenants, and officers commissions, not vacated by the revocation, &c. of the commission of lieutenancy—Lord lieutenant to have the chief command of the militia of the county—Twenty or more deputy lieutenants to be appointed for every county, if so many can be found qualified, 116

Qualification of a deputy lieutenant and colonel, 400*l.* per ann.—of a lieutenant colonel and major, 300*l.* per ann.—of a captain, 200*l.* per ann.—lieutenant, 100*l.* per ann.—and ensign, 20*l.* per ann. A moiety of the estates requisite to their several qualifications, except those of the subaltern officers, to be within the county for which they serve 117

What shall be deemed equal to an estate of 100*l.* per ann. and so in proportion, requisite to a qualification—A leasehold estate originally granted for twenty years, equal in annual value to what is required for the qualification of a deputy lieutenant and commission officer, deemed a sufficient qualification 118

Five or more deputy lieutenants for the counties of Cumberland, Huntingdon, Monmouth, Westmoreland, Rutland, and principality of Wales—Qualification of a deputy lieutenant or colonel for those counties, 300*l.* per ann.—of a lieutenant colonel, 200*l.* per ann.—captain, 150*l.* per ann.—lieutenant, 70*l.* per ann.—and ensign, 20*l.* per ann.—A moiety of the estates requisite to their several qualifications, except for lieutenants and ensigns, to be within the county for which they serve—In those counties where 20 deputy lieutenants cannot be found duly qualified, and willing to act, so many with a qualification of 200*l.* per ann. may be appointed, as will make up that number, the whole number for such county not to exceed 20. 117, 118

Qualification of deputy lieutenants and officers for the isle of Ely, viz. of a deputy lieutenant 200*l.* per ann.—of a captain, 100*l.* per ann.—lieutenant, 50*l.* per ann.—and ensign, 20*l.* per ann.—A moiety of the estates requisite to their several qualifications, except for lieutenants and ensigns, to be in the isle of Ely, or com. of Cambridge 118, 119

Five or more deputy lieutenants to be appointed for such cities and towns as are counties within themselves; and officers proportionable to the quota of men. All powers and provisions in the act respecting counties at large, extended to the said cities and towns; except, that after the number of men they are to furnish, is appointed, two deputy lieutenants may exercise all the powers conferred by the act on three deputy lieutenants, &c. 120

The qualification for such cities and towns, viz. of a deputy lieutenant, and field officer, 300*l.* *per ann.*—of a captain, 150*l.* *per ann.*—lieutenant or ensign, 50*l.* *per ann.*—A moiety of the estates requisite to their several qualifications, except for lieutenants and ensigns, to be within the same, or the county at large to which they are united; and the militia thereof to join that of the county, and to be exercised together with them at the general exercise; and when drawn out and embodied, to be deemed part thereof 120

Officers may be promoted for their military merit in time of actual invasion, or rebellion, though they want a proper qualification; but none to be promoted higher than a captain, who want a qualification for that rank, *ib.*

Recited qualifications not to extend to commissions granted by the constable of the Tower, or lieutenant of the Tower Hamlets 120, 121

Deputy lieutenants and officers may be displaced at the king's pleasure; and others to be appointed in their room—Qualifications to be signed, and left with the clerk of the peace to be enrolled, before they presume to act; and they are to take the oaths appointed by act 1 Geo. 1, and make and subscribe the declaration therein appointed—Deputy lieutenants and other field officers, acting, not being qualified, or not complying with the above regulations, forfeit 200*l.* and captains and subalterns 100*l.* to be recovered in any of the courts at Westminster; one moiety thereof to go to the prosecutor 121

Proof of qualification in all suits to lie on the defendant 122

Peers, and heirs apparent of peers, may be appointed deputy lieutenants or commission officers for the county where they reside; and their qualification not necessary to be left with the clerk of the peace; but on taking the oaths, &c. they may act without being otherwise qualified *ib.*

Acceptance of a commission does not vacate a seat in parliament—Where the militia is not raised, the lord lieutenant is to advertise the want of officers, a month before the quarter sessions at Christmas, and Midsummer, respectively; and persons qualified and willing to serve, are thereupon to return

their names, &c. *ib.*

Where the militia has not been raised in pursuance of the act of 30 Geo. 2, and other subsequent acts relating thereto, or shall not be raised in pursuance of this act, 5*l.* *per man*, annually, is to be paid by every such county, &c. and certificates thereof, and of the sums thereupon due, are to be returned at the end of the next year to the quarter sessions, and the justices are forthwith to rate and assess the sums so certified, in like manner as county rates, by act 12 Geo. may be rated and assessed, &c. and the treasurer of the county is to pay over the same to the receiver general 122, 123

The said rate to be made, levied, and paid, distinctly from all other county rates 123

After notice given of the amount of the rates, the parochial officers, &c. are to rate and levy the monies by a distinct rate and assessment upon the respective towns, parishes, and places; and tenants and occupiers paying the same, are to be allowed what they shall so pay in their rent 123, 124

Agreement between landlord and tenant not vacated, where the estate leased is not let at rack rent; and landlord to allow only in proportion to the rent he receives—Where the militia for any county, together with any city or town being a county of itself, is not raised, the sum of 5*l.* *per man* is to be apportioned between them, in such proportion as their respective quotas to the land tax bear to each other; but if an apportionment of the men shall have been made, the said sum is to be borne them in such proportion as the numbers of men to be raised by them respectively bear to each other 124

Receiver general to pay over the said county rates, together with the land tax, into the Exchequer, distinguishing the monies payable on this act; the same to be kept separately, and paid over by the Treasury to the treasurers of such counties as shall have raised their militia, in proportion to their number of men, to be made part of the county stock. No deduction to be made from the monies so paid into the Exchequer 124, 125

Where the militia of any county, &c. shall be raised as this act directs, such county is to be exonerated from payment of the said sums 125

Lord lieutenant may act as colonel to any regiment, &c. for which no colonel is appointed, but may not act to more than one at a time; and if the command be a battalion, he is to receive pay as lieutenant colonel only; and no other person is to serve, or be intitled to pay as lieutenant colonel, while he serves as colonel 125

At the end of every 4 years, one field officer of each regiment, &c. and a number of officers

I N D E X.

of each inferior rank, equal to the number of persons who shall have been returned as willing to serve, are to be discharged 125, 126

The number of such vacancies not to exceed one third in each rank—Officer who has served 4 years, may offer to serve in a higher rank, if qualified 126

An adjutant may be appointed by the king to each regiment, &c. out of his majesty's other forces, or embodied militia; and if appointed out of his majesty's other forces, he is to keep his rank therein, and may hold a subaltern commission without a qualification: ib.

Militia officer exempted from serving as sheriff—Officers quitting their half-pay to serve in the militia, upon quitting the militia, or unimbodyed, are to be restored the half-pay again 126, 127

Serjeants may be appointed by the king out of his majesty's other forces, or embodied militia, in the proportion of one serjeant to twenty private men, two or more to every company—Oath to be taken by serjeants 126, 127

Serjeants appointed out of his majesty's other forces, intituled to Chelsea hospital; and pensioners of the said hospital, made serjeants, are to be readmitted, on producing certificates of good behaviour—Lord lieutenant to appoint a regimental clerk, and the colonel, &c. a serjeant major, and drum major, to each regiment 127

Alehouse-keepers disqualified from being serjeants 127

Captain may appoint two drummers or fifers to his company; and one corporal to twenty men; and may displace them for misbehaviour: he may also, with leave of the colonel, fill up vacancies of serjeants out of the ranks—Such serjeants to take the oath appointed. They may be displaced upon application of the captain—Serjeants from the army being reduced for misbehaviour, and not restored within a month, are to be returned to the corps from whence they were taken, and serve in the ranks—Serjeants made from the militia may be reduced into the ranks for misbehaviour 127, 128

The inlisting of a serjeant, drummer, or fifer, into his majesty's other forces, declared void 128

Number of private men to be raised in each county, &c. 128—130

Where the militia has not been raised, a general meeting is to be held by the lord lieutenant and two deputies; or, in the lord lieutenant's absence, by three deputies, on the second Tuesday in May annually; and on failure of meeting, then a meeting is to be held by summons and advertisement 130

At their first general meeting, the sub-divisions

of the deputy lieutenants, and the times and places for their first meetings therein, are to be settled; and also a second general meeting appointed 131

Orders, to be then issued to the constables, to return lists of all persons within their districts, between the ages of eighteen and forty-five years; distinguishing their respective ranks and occupations, &c. 130, 131

Copy of the list to be affixed on the door of the church, on some Sunday, three days before the return is made, with notice of the day and place of meeting; that persons aggrieved may then appeal; after which no appeal will be received 131

Constables to attend the returns, and verify the same on oath 131

After the appeals are heard and settled, and persons excepted by the act struck out, the deputy lieutenants are to direct the lists to be amended; and appoint the times and places for their second sub-division meetings; and return the amended lists to the second general meeting; at which, copies of the lists are to be made out, to be returned to the deputy lieutenants, at their second subdivision meetings; and the number of men which shall serve out of the respective hundreds, &c. is to be then appointed—Deputy lieutenants at their second subdivision meetings, are to appoint the number of men that shall serve in each parish, &c. in proportion to the number appointed for each hundred, &c. 131, 132

And if a proper number of officers be then appointed, another meeting is to be held within three weeks; and orders issued, for notice to be given to the constables of the number of men appointed to serve, and of the time and place of the next subdivision meeting; at which the men are to be chosen by lot out of the lists; and another meeting is to be appointed, and orders issued for giving timely notice to the persons chosen, then to appear; and the constables are to attend to avouch the notices; and the men to take the oath following, &c. 132

And to be inrolled for three years, or provide fit substitutes, who shall take the said oath, and sign their consent to serve for the said term—Those who refuse to attend and be inrolled, or to provide fit substitutes, not being quakers, forfeit 10l. and at the end of three years are liable to serve again, or provide a substitute 132, 133

Specification of persons exempted from service in the militia by themselves or substitutes 133

The lists for two or more parishes may be united by the deputy lieutenants, and proceeded upon as if originally returned for one parish 133

Church-

Churchwardens, &c. with consent of the vestry, may provide and tender volunteers; and such of them as shall be approved, shall be then sworn in, and inrolled; and so many persons only shall be chosen out of the lists, as shall be then wanted to compleat the number to serve for such parish—Money paid to volunteers for serving, to be reimbursed the churchwardens by a parochial rate: overplus of the rate to be applied to the poors rate—The said rate may be levied by distress and sale; but ballotted persons who have served, or shall be serving, by themselves or by substitutes, are exempted from paying thereto

133, 134

Persons aggrieved by such rates, may appeal 134
The churchwardens are to pay within a month to the persons who shall be chosen by lot and inrolled, or shall provide fit substitutes, (if the regiment be then embodied) such sum not exceeding 5l. as shall be adjudged one half of the current price paid for a volunteer; the money to be paid out of the volunteer rate, or a rate made for that purpose 134, 135

If the person chosen by lot and inrolled, shall be disapproved of, and discharged within the month, the money shall not be paid to him, but to the next person chosen in his stead; and the same rule is to be observed in the case of substitutes; and no money is to be paid on that head, but by an order of the deputy lieutenants before whom the persons were chosen — 135

Hired servants serving in the militia, upon application to a justice, shall recover the wages then due to them—Justice to proceed therein as directed by act 20 Geo. 2. — 135

None but churchwardens and overseers may make any pecuniary contract to indemnify or insure persons from serving in the militia, or to provide substitutes, or pay the 10l. in lieu thereof; on penalty of forfeiting 100l. — One moiety thereof to go to the prosecutor, and the other to the poor of the parish, and the contract to be void — 135, 136

The above clause not to prevent persons chosen by lot from procuring substitutes for themselves; nor persons of the same or neighbouring parishes, from subscribing towards paying jointly for substitutes, in the room of such of them as shall be chosen by lot 136

Hired volunteer or substitute inlisting in the army, such inlisting is declared void, unless the money be returned to the overseers of the parish, which is to be laid out by them in providing another fit person; and if the sum be insufficient, they are to be reimbursed the additional expence by a rate, and account for the surplus; and such hired volunteer or substitute so inlisting, not informing the officer

of his being in the militia, is to be committed to the house of correction not exceeding three months — — — — — ib.

Serjeant, drummer, or fifer, beating up for volunteers for the militia, the person who gave the orders forfeits 20l.—One moiety to the informer, and the other to the regimental stock; and the serjeant, &c. not declaring who gave such orders, is to be committed to the house of correction not exceeding three months — — — — — 137

While the militia is out of its proper county, no person may be engaged to serve therein, who is not of the county to which such regiment belongs — — — — — ib.

A general meeting of the lord lieutenant and deputies to be held annually on the last Tuesday in May, or October, as shall be adjudged most convenient; and the times and places to be then appointed for holding four or more subdivision meetings, and for the returns of the new lists to the first of those meetings — — — — — ib.

Where any list shall be lost or destroyed, the deputy lieutenants are to order new ones to be made and returned to their next subdivision meeting — — — — — 137, 138

Deputy lieutenants are to hold their subdivision meetings pursuant to the appointment at the general meetings: and militia man appearing thereat, and shewing cause for his discharge, and producing, if embodied, a discharge from his commanding officer, they are to discharge him, and fill up all vacancies occasioned thereby, or otherwise, after having amended the lists, by proceeding to draw the lots, unless the number wanted shall be otherwise provided; and the persons so chosen or their substitutes are to be inrolled for three years 138

A subdivision meeting may be held on seven days notice, for filling up vacancies by death, or otherwise — — — — — ib.

Vacancies occasioned by the death, promotion to a halberd, or discharge of a substitute, to be filled up as in cases of death, or discharge of persons serving for themselves — 138, 139

Substitute may be sworn in and inrolled before a deputy lieutenant in his subdivision, on producing a certificate of his having been seen and approved of by two deputy lieutenants, &c. and the clerk of the subdivision meeting attending with the roll at the time — 139

Militia man embodied, and discharged by the commanding officer, is not liable to be apprehended as a deserter; nor shall another be chosen in his room, unless he be discharged also by the deputy lieutenant — ib.
Militia men, whose time of service shall be near expiring, are to be returned to their proper;

I N D E X.

- proper county, so as they may reach the same by the expiration of their term — *ib.*
- Subdivision meetings may be altered at a general meeting, held after reasonable notice; but the subdivision meetings already appointed are to remain until they shall be by a general meeting altered — 139, 140
- Removal of a private man into another parish, &c. the militia whereof serves in the same regiment, does not alter his service, nor occasion a vacancy in his former parish; but if the removal be into another county, &c. the militia whereof serves in different regiments, he shall serve his time out in the regiment of that place, upon the first vacancy; and he is to give previous notice of his removal to the deputy lieutenants, and receive a certificate of his service; and if given by one deputy lieutenant, is to be certified to the next subdivision meeting; and the certificate itself to be produced at the subdivision meeting for the place to which he shall remove. On neglect of giving such notice, and producing certificate, he forfeits 20s. to be levied by distress and sale; and for want of distress, he is to be committed not exceeding one month — 140
- Clerk of the subdivision meeting is to give notice of such militia man's change of abode, &c. to the clerk for the division to which he shall remove — 141
- No substitute is to be excused from serving for himself when chosen — *ib.*
- Copies of the rolls signed at the subdivision meetings to be transmitted to the lord lieutenant in fourteen days after each meeting *ib.*
- Constables or other officers neglecting to return the lists, or comply with their orders, or being guilty of fraud or partiality in their returns, to be imprisoned for one month, or fined not exceeding 5*l.* nor less than 40*s.* to be levied by distress and sale — *ib.*
- Deputy lieutenants may issue their order, commanding the occasional attendant of the constable, or other parish officer; and on his disobeying such order, may fine or imprison him — 141, 142
- Persons tampering with the constables to make false returns, or to erase, &c. the name of any person out of the lists, forfeit 50*l.* to the prosecutor; and persons refusing to declare their own names, or those of their lodgers, &c. forfeit 10*l.* — 142
- Deputy lieutenants being informed of, or suspecting, the fraudulent hiding-out of persons returned in the list as apprentices, in order to avoid serving, may summon and examine witnesses upon oath touching the same; and if any fraud shall appear, they are to appoint such person to serve immediately, or upon the first vacancy that shall happen; and the master to whom such person was so bound shall forfeit 10*l.* to be levied by distress and sale: one moiety thereof to go to the informer, if any — 142, 143
- Lord lieutenant is to transmit, from time to time, to the privy council, a state of the numbers of persons in the county fit to serve; and the privy council is thereupon to settle the quota of men to serve, by the proportion the returns for each county bear to the whole number to be rated within the kingdom; and are forthwith to transmit accounts of the numbers so settled to the lord lieutenants — 143
- And where the number shall be greater than is appointed by the act, a general meeting is to be held by the lord lieutenant and deputies, and the additional men are to be then provided or chosen in like manner as is directed in other cases; and where the number settled shall be less than is appointed by the act, the supernumeraries shall be discharged by lot — 143, 144
- Where the numbers to be raised shall appear at a general meeting to have been unequally or erroneously apportioned amongst the several hundreds or divisions of the county; or that by alteration of circumstances the same is become unequal, &c. the lord lieutenant and deputies may make a new and more equal distribution; and raise and discharge men conformable thereto — 144
- Serjeant and militia man exempted from statute work and parish offices; and from being obliged to serve in his majesty's land or sea forces — *ib.*
- Militia man falling sick on a march, or at the place of annual exercise, is to be provided for by an order from the magistrate, or justice of the place; and the expence is to be reimbursed by his proper parish — *ib.*
- No person having served three years, is liable to serve again but in rotation — 145
- The same liberty is granted to militia men being married and embodied, to set up trades within Great Britain or Ireland, as by act 22 Geo. 2, is granted to mariners or soldiers — *ib.*
- Militia man, if unembodied, is not intitled to his clothes, till he has served three years; but if embodied, they are to be applied to his use at the end of one year — *ib.*
- Overseers are to pay out of the poor rates, by order of some justice, a weekly allowance to the distressed families of such men embodied and called out, as shall have been chosen by lot, and of such substitutes, hired men, and volunteers, as were enrolled before 22 May, 1760, according to the usual price of labour — *ib.*

in husbandry within the county, and the number and age of the children: viz. for one child under ten years, one day's labour; two ditto, two days labour; three or four ditto, three day's labour; five or more ditto, four day's labour; for the wife one day's labour: and where the said rates shall be insufficient, a new rate is to be made; and the overseers are to be reimbursed forthwith out of the county stock ————— 146

Treasurer of the county is to keep an account of the monies so reimbursed to the overseers, and return half-yearly the said accounts with those received from the city treasurer, &c. into the exchequer ————— ib.

Where any city or place shall not be liable by act 12 Geo. 2, to contribute to county rates, the justices may appoint a treasurer, and assess each parish, proportionate to their usual poor rate, in a sum sufficient to reimburse the overseers the weekly allowances paid by them; and such treasurer is to reimburse the said overseers, and keep an account of the monies paid by him, and transmit the same half-yearly to the county treasurer. Treasurer of the city of Lincoln is to transmit his accounts to the treasurer of Lindsey division ————— 146, 147

Allowance made within the city and county of the city of Exeter, are to be paid by the treasurer of the guardians of the poor, and to be assessed and levied as their poor rate is by acts 9 Will. 3, and 31 Geo. 2, directed; and to be additional to what they are authorized to raise for their poor rate; and to be raised and levied under like penalties; and the money already advanced and paid by the said treasurer towards the said allowances is to be raised and levied in like manner ————— 147

Monies to be levied by this act, by parish rates in Bristol, are to be raised and paid, &c. as the poor rate there: and to be additional to what is already authorized to be raised there: and the money already advanced by the treasurer of the corporation of the poor is to be assessed and repaid him; and all acts requisite thereto, are to be done under like penalties, as are prescribed with respect to officers neglecting their duty in execution of the poor laws there ————— 147, 148

Where treasurers shall reimburse to overseers any money, on account of the weekly allowance to the families of militia men serving in any county, other than that wherein such families dwell, they are to transmit an account thereof, signed by a justice, to the treasurer of the county wherein such men serve, who is to reimburse them the same 148

If a quaker be chosen, and refuses to serve, or provide a substitute, the deputy lieutenants

may provide one, and levy the expence by distress and sale; but if any oppressive measures be used in making such distress, he is to be redressed upon complaint made by him ————— 148, 149

And where any quakers shall refuse to pay the rates authorized by this act to be made, the justices upon complaint of the churchwardens, may order reasonable cost and charges for levying the distress, in proportion to the sums here allowed ————— 149

Deputy lieutenants and justices may act in any and every subdivision of the county for which they are commissioned ————— ib.

A clerk for the general meetings is to be appointed by the lord lieutenant and clerks for the subdivision meetings by the deputy lieutenants ————— ib.

Two deputy lieutenants and one justice, or one deputy and two justices, may exercise the same powers in the counties of Cumberland, Huntingdon, Monmouth, Westmorland, Rutland, and Wales, as are conferred on three deputy lieutenants of any other county ————— 149, 150

Where a sufficient number to act shall not appear at any subdivision meeting, the clerk is to give five days notice of another meeting to be held within fourteen days after the former meeting ————— 150

Fines for not serving are to be applied in providing substitutes; and the surplus, if any, to be applied as part of the regimental stock ib.

Persons liable to serve, having more than one place of residence, shall be deemed to reside in, and shall serve only in the county where first returned in the list; and certificates, if required, shall be granted gratis for such returns ————— ib.

A general meeting is to be held of the lord lieutenant and deputies, &c. within a month after the return of the rolls from the deputy lieutenants to form the men, (if not already) into regiments of twelve, but not less than eight companies of eighty men at the most, and sixty men at the least, and post the officers, viz. one colonel, one lieutenant-colonel, and one major to each regiment; and where the number of men shall make five or more companies, but less than eight, they are to be formed into battalions, with one lieutenant-colonel, and one major; and to a battalion of three companies, or less than five, one lieutenant-colonel or major; and one captain-lieutenant, and ensign to each company, grenadier companies excepted, wherein are to be one captain and two lieutenants ————— 150, 151

Where the militia has been already formed and ordered, they are, within two months after being

I N D E X.

- being disembodied, &c. to be reformed, according to the rules prescribed for the first forming and ordering them — ib.
- Where the number of men shall not be sufficient to compose a regiment or battalion, they are to be formed into independent companies from sixty to eighty men each, with one captain, one lieutenant, and one ensign; and they may be joined, and formed into battalions, or be incorporated with some regiment or battalion, so as the number of companies therein does not exceed, or fall short of, the number a regiment or battalion ought to consist of — ib.
- When a regiment or battalion shall be unembodied, the commanding officer may appoint a regimental clerk thereto — 151, 152
- The militia is to be trained and exercised, by regiment or battalion, twice a year, fourteen days each time, or once a year, for twenty-eight days together, at the most convenient times and places; during which time all the provisions in the act for punishing mutiny and desertion, not extending to life or limb, are to take place for the officers and men; who are to be quartered and billeted by the civil magistrate, in inns, livery stables, and public houses, application for that purpose being made by the commanding officer — 152
- Serjeants, drummers, and fifers, are to be quartered and billeted in like manner; but are to be provided with convenient lodgings only, at such times as no provision has by law been made for that purpose — ib.
- A return is to be made to the lord lieutenant of the state of the regiment, &c. while unembodied when called out to exercise — 153
- Notice of the times and places of exercise to be sent to the chief constables, to be forwarded by them to the parish, &c. and to be affixed on the church doors of the respective parishes: and if any militia man (not being disabled) neglect to appear according to such notice, he forfeits 20 l. and on non-payment, is to be committed for six months, or until he shall have paid the penalty — ib.
- The captain is to have the charge of the arms, clothes, and accoutrements of his company; and the church-wardens are to provide chests for the safe keeping thereof; and care is to be taken that the men return them in good order after exercise — ib.
- The lord lieutenant or deputies in his absence, may seize and remove the arms, &c. when necessary to the public peace, and lodge them with other persons — 154
- Persons intrusted with the custody of the arms, &c. delivering out the same, unless for exercise, or by proper command, may be committed for six months — ib.
- No pay, arms, or clothing are to be issued, nor adjutant or serjeants appointed, till three fifths of the men and officers have been enrolled and taken out their commissions — ib.
- Muskets for the militia are to be marked with an (M) and the name of the county, &c. ib.
- Militia man who shall sell, pawn, or lose, his arms, clothes, or accoutrements, forfeits 3 l. and on non payment, is to be committed to the house of correction for one month, and until satisfaction be made; and if not of ability to pay, he is to be committed for three months; and if he neglect to return them in good order when demanded, he forfeits 10 s. and on non-payment, is to be committed for any time not exceeding fourteen days — 154, 155
- If any person shall knowingly and unlawfully buy, exchange, conceal, or receive any of the said arms, clothes, or accoutrements, he forfeits 5 l. for every such offence, to be levied by distress and sale; and for want of distress, he may be committed for three months, or be publicly whipt at the discretion of the justice — 155
- None are liable to penalty for absence, during the time of going to vote for a member of parliament, or returning — ib.
- If the person intrusted with the care of the arms, &c. shall not within three days complain to any justice of any militia man not having duly returned the same, he forfeits 20 s. to be levied by distress and sale — ib.
- The serjeants are to receive their military orders from the adjutant, and superior officers; and are to report to them, or to two deputy lieutenants, or a civil magistrate, the crimes and misdemeanors of the men. — 156
- Non-commission officer being negligent in his duty, or insolent, or disobedient to his superior officer, forfeits any sum not exceeding 30 s. and on non-payment may be committed for fourteen days; and is liable to be discharged — ib.
- Chief constables and others are required to be aiding and assisting to the lord lieutenants, deputies, and justices, &c. in the execution of this act — ib.
- In case of actual invasion, or imminent danger thereof, or of rebellion, the king, having first communicated the occasion to parliament, if sitting, and if not, to the council, and notified the same by proclamation, may order the militia to be drawn out and embodied; or so many of them as he shall judge necessary; and put them under command of general officers; and direct them to be led into any parts of the kingdom for the suppression of invasions and rebellions, 156, 157
- And they are to receive pay as the king's other regiments

- regiments of foot, till they shall be returned again; and the officers are to rank with those of equal degree in his majesty's other forces, as the youngest of their rank; and are to be under all the provisions of the mutiny act; excepting where it is otherwise specially provided for; and when returned to their own parishes, they are to be under the same orders and directions only as before they were drawn out and embodied — 157
- And any non-commissioned officer or private man being maimed or wounded in the service, are equally intitled, with those of his majesty's other forces, to Chelsea Hospital 157, 158
- The lord lieutenant or deputies, are to issue orders of the embodying to the chief constables, to be forwarded to the petty constables, who are thereupon to give notice to the men to attend; and any man, not being disabled, refusing to appear and march, forfeits 40*l.* and on non payment, is to be committed for twelve months, or until payment of the penalty: and any person knowingly harbouring or concealing any militia man, absconding when called out into actual service, forfeits 5*l.* to be levied by distress and sale; and for want of distress, he may be committed for two months, or be publicly whipped — 158
- In case of invasion, or imminent danger thereof, or of rebellion, the parliament, if adjourned, or prorogued, above fourteen days, is to be summoned to meet; and are to sit and act as if adjourned, or prorogued, to the day of such meeting — ib.
- Officers and men are intitled to pay, from the date of the king's warrant for their being embodied — ib.
- When a regiment, &c. is drawn out and embodied, the commanding officer is to appoint an agent thereto, taking security; and is liable to make good any deficiencies of pay, cloathing, or regimental stock — 158, 159
- A captain may, with leave, augment his company, when ordered out into actual service, with volunteers, if properly disciplined and provided, and who will take the oath appointed, and sign the rolls, and be subject to the articles of war — 159
- Officers of the militia and his majesty's other forces, are not to sit indiscriminately on trials for offences committed by the different corps — ib.
- Receivers general of the land tax are to pay to the captain or commanding officer of such company when ordered out into actual service, one guinea per man for each private man belonging thereto, whether such man marched with the company when drawn out, or was afterwards ordered to join it; to be paid over by the captain to the men before they march; and to such as shall be afterwards ordered out, when they shall join the companies — ib.
- When the militia shall be called out to be trained, the justices of the peace, upon an order from the lord lieutenant or deputy, or commanding officer, are to issue warrants for providing such carriages for the use of the troops, as are ordered, with able men to drive them; and where a sufficient number cannot be provided within the county, &c. the neighbouring justices are to issue warrants for furnishing what shall be so wanted — 159, 160
- Officer is to pay down to the constable the following rates for the use of such carriages; 1*s.* for every mile a waggon with five horses, or a wain with six oxen, or four oxen and two horses; nine-pence for every cart with four horses; and so in proportion; for which a receipt is to be given him; and the constables are to order carriages to be furnished accordingly; the same to be for one day's journey only; and any additional expences incurred thereby, are to be repaid out of the county stock — 160
- Constables, &c. neglecting their duty in furnishing such carriages, forfeit not less than 20*s.* nor more than 40*s.* to the use of the poor; to be levied by distress and sale — 161
- No part of the militia may be transported out of Great Britain—Provisions, &c. in the act respecting Com. Northumberland, are to take place with respect to Berwick upon Tweed, except wherein it is otherwise provided for; and the number of men to serve for the said town, is to be in proportion to the number appointed for the other hundreds, &c. within the county; and the chief magistrate is to appoint five deputy lieutenants, if so many shall be found qualified, and officers proportionable to the quota of men; who are to carry the act into execution; subject however to the penalties of non-qualification; and the men are to join, and be exercised with the militia of the county, and be deemed part thereof — ib.
- When the number of men is settled that the Isle of Wight is to furnish, the governor of the island is to appoint the officers; and he is to act as lords lieutenants of counties are impowered and required; and is to appoint five or more deputies; who are severally to be qualified, and act, as is prescribed with respect to deputy lieutenants and officers for Wales; and the militia is to be raised as in the Com. Southampton, and deemed a part thereof; and there to be trained and exercised in the same manner, and continue there as an internal defence — 162
- All fines, penalties, and forfeitures, where not otherwise directed, are to be recovered, on proof

- proof upon oath of the offence before a justice for the county, &c. by distress and sale; and where sufficient distress cannot be had, the offender is to be committed for three months; and where not otherwise directed, they are to be paid to the regimental clerk, and made a common stock, and be accounted for by him to the colonel or commanding officer of the regiment; and are to be applied in erecting butts, providing powder and ball, and in prizes to the best marksmen, and to other contingencies of the regiment 162, 163
- Where any person shall be committed to the house of correction, he is to be kept to hard labour there ————— ib.
- Lord lieutenants, deputies, and justices, in all matters to be tried before them, impowered to examine the witnesses upon oath — ib.
- And no order or conviction which shall be made by them shall be removed or superceded, by writ of certiorari ————— ib.
- Where a parish shall be in more counties or ridings than one, the men shall serve in the militia of the county, &c. wherein the parish church stands, and be subject to the same jurisdiction ————— ib.
- The inhabitants of Craike shall serve in the militia for the north riding of York, and be subject to the same jurisdiction ————— 164
- The inhabitants of Maker parish shall serve and be trained with the militia of Cornwall, and be deemed part thereof ————— ib.
- And those of Workingham, with the militia of Com. Berks; of Filey, to serve in that of the east riding of York; of Threapwood, in that of Flint; and to be exercised with that of Worthenbury; and of Saint Martin, called Stamford Baron, in that of Lincoln——
- The tinnors in Devon and Cornwall are to be under the lord warden of the flannaries ib.
- Lieutenants for London are to list and levy the train bands, as heretofore ————— ib.
- The constable of the Tower is to appoint deputy lieutenants and officers, to train and discipline the militia of the Tower Hamlets, pursuant to act 13 & 14 Car. 2, which are to be formed into two regiments of eight companies each; and he is to raise trophy money annually, to defray the incident charges thereof, and appoint a treasurer, who is to render upon oath an account yearly, which is to be certified to the quarter-sessions; and no money may be raised till the accounts of the preceding years are passed by the justices; unless by the death of the treasurer such accounts cannot be passed ————— 164, 165
- The lord warden of the Cinque-ports, and his lieutenants, are to execute therein the powers granted them by former acts, in like manner as the lords lieutenants and deputies of counties may do; and may continue the usual number of soldiers therein; and the militia thereof is to remain separate from that of the counties wherein they are situate; and they may raise and draw out, in pursuance of orders from the king, conformable to the act of 13 & 14 Car. 2, the militia thereof, notwithstanding the pay advanced be not reimbursed; and provide the soldiers with a month's pay in hand; and may exercise the usual powers for arraying, assessing, arming, and exercising, &c. the men, and raising trophy money, &c. ————— 165, 166
- All former militia acts are repealed, except in cases subjected to provisions in the said acts; and nothing in this act is to vacate any thing done in pursuance of the former acts; or prevent any proceedings commenced in pursuance thereof ————— 166
- Where, in pursuance of the former acts, the militia has been raised, and precepts issued for returning lists, and proceedings had thereon, the deputy lieutenants and justices are to proceed, as those acts direct, in execution of all matters and things subsequent to such precepts, and the lists returned or to be returned thereon; and levy the fines and penalties incurred on that account as those laws direct ————— 166, 167
- Limitation of actions—General issue—Trespass costs ————— 167
- Stat. 4 Geo. 3, c. 17, In counties where the militia has been or shall be raised, general meetings may be summoned in the same manner as in counties where the militia has not been raised, and shall have the same power as meetings held on the last Tuesday in May, or the last Tuesday in October — 168
- In every county, &c. where the office of lord lieutenant is vacant, his majesty to appoint three deputy lieutenants, to execute that office so far as relates to the acts for raising and training the militia ————— ib.
- No volunteer or substitute to be admitted and sworn, who shall not be five feet four inches high ————— ib.
- A person being inrolled to serve in the militia of one county, and who shall engage and be inrolled to serve in the militia of another county, forfeits 10*l.* if not immediately paid, to be committed for any time not exceeding three months ————— 168, 169
- A militia man on the march, or at the place of exercise, disabled by sickness, or otherwise, to be relieved by the officers of the parish where he shall then be, and parish officers to be reimbursed the expences occasioned thereby, out of the county stock, upon producing accounts thereof allowed by a justice of the peace ————— 169

- Militia men, who after having joined their corps, shall desert, during the time of annual exercise, and shall not be taken till after the expiration of the time of annual exercise, shall incur the same penalty as militia men not joining their corps — ib.
- A captain or commanding officer may put corporals and private men under stoppages, not exceeding 6d. a day, and shall account with them for such stoppages before they are dismissed from annual exercise — 169, 170
- A drummer negligent in his duty, or disobedient to the orders of the adjutant, or other superior officer, to forfeit not exceeding 40s. if not immediately paid, the captain of the company to stop the pay of such drummer, to pay the penalty: penalty to be applied as part of the common stock of the regiment or battalion — 170
- Where the militia shall not be raised for any county within which any city shall not be rated to the county rate, the payment of 5l. per man shall be apportioned between such county and city as the respective quotas paid to the land tax bear to each other; and the sums so apportioned shall be paid out of the poor's rate collected in such city by the churchwardens and overseers of the poor, to the treasurer of the county, to be by him paid to the receiver general, together with the proportion of the said sum of 5l. to be paid by such county — 171
- The same method to be followed in such cities as are counties of themselves — ib.
- Where a town lies in two counties they are to contribute their quota, in lieu of raising the militia, for that county in which their church stands; and the deficiencies of the other county rates, are to be made up by the county in general — 172
- Stat. 5 Geo. 3, c. 34. Militia man (not being incapacitated) neglecting to appear at the appointed time and place of exercise may be apprehended; oath being made before a justice of such default, and that he was inrolled, &c. and also proof made of the hand writing of the clerk; and if he shall not make satisfactory proof of one or other of the three causes of excuse here allowed, he shall forfeit 10l. and if not paid forthwith, he shall be committed for six months — 172, 173
- Justice may proceed against deserters in like manner, as against militia men neglecting to appear at the appointed time and place of annual exercise — 173
- Stat. 5 Geo. 3, c. 36. The year with respect to certificates to be made by lieutenants and deputy lieutenants of counties, the militia whereof has not been duly raised, is to end on the second Tuesday in May in every year; and the certificates to be made to the quarter-sessions next after; together with the amount of the sums to be raised — 174
- Where the lieutenant of any county shall be beyond seas, he is to appoint three or more deputy lieutenants, who are to certify accordingly — 174, 175
- In counties, &c. where there shall be no lieutenant, three or more deputy lieutenants, appointed under the royal sign manual, are to carry the recited acts into execution — 175
- Where the lieutenant shall be beyond seas, and no deputy lieutenants appointed, the clerk of the peace is to certify — ib.
- Where the sums payable by virtue of the recited act, by any city or place, not rated to the county rate, shall not be paid by 10 September yearly, to the treasurer of the county, the justices at their quarter-sessions are to issue an order to the parish overseers to certify to the Xmas quarter-session their respective quotas to the land tax; and according thereto, a bench warrant is to be issued, for levying the sum on the churchwardens and overseers, who are to be reimbursed the same in like manner as the poor rates — 175, 176
- Where any person inrolled in the militia shall insist in his majesty's other forces, the overseer of the parish is to acquaint the adjutant therewith; who is to apply to a justice for a warrant, and send in pursuit of the offender; and the warrant may be backed by any other justice: and if it appear that the officer inlisting was not acquainted with such inrollment, the offender is to be committed to hard labour for three months, and the inlisting is void, unless the officer pay 5l. to the overseer within twenty days, to be applied as by act 2 Geo. 3, is directed — 176, 177
- Where the militia has been, or shall be raised, the lieutenants or deputy lieutenants are to certify the same yearly to the clerks of the peace, with such other particulars as are here mentioned; and the clerks are to deliver the same to the justices at their general quarter-sessions, and file them among the records of such sessions — 179
- And where no such certificate shall be delivered from the lieutenant or deputy lieutenants, the clerks of the peace are to certify the same to the said sessions, and file such certificates — 179, 180
- And the justices are thereupon to assess 5l. per man upon such county or place, to be levied and accounted for as the county rates, according to act 12 Geo. 2, or acts 2, 4, & 5 Geo. 3, the said payment to be in full discharge for neglect of not raising and training the militia—Treasurer of the county to pay the money to the receiver general; who is to certify

I N D E X.

certify the receipt thereof to the treasury, and pay over the money into the exchequer 180
 No fee to be given for money paid to the receiver general, or into the exchequer, or issued thereout ——— ib.
 Clerks of the peace are to transmit to the treasury and receivers general, copies of the certificates delivered in pursuance of this act; and where none such are delivered, are to certify the same accordingly; together with the proceedings of the sessions, in relation to assessing the penalty ——— 180, 181
 Clerk of the peace neglecting his duty in the premises, forfeits 500l. and his office, and is disabled ——— 181
 Where there shall be a failure of raising or paying the sums chargeable for not raising the militia, the receiver general is to certify the same into the court of exchequer; and process is to issue thereupon against the treasurer of the county; who is to pay such sums into the exchequer, out of the county stock; and the auditor is to give a receipt for the same ——— 181, 182
 Solicitor to the treasury is to prosecute to effect treasurers making default ——— 182
 Justices at their general quarter-sessions are to assess a sum sufficient for reimbursing the treasurer ——— ib.
 The assessments to be made according to the provisions in the act of 4 Geo. 3.—The money paid into the exchequer, to be kept separate and apart from all other monies; and to be applied as is directed by act 2 Geo. 3. ——— ib.

Miller.

How toll of a mill shall be taken ——— 183
 Toll to be regulated by custom ——— ib.
 Minister. See *Public Worship*.
 Misadventure. See *Homicide*.

Misdemeanor.

Definition of, and how punished ——— 184
 Misprision of felony. See *Felony*.
 Misprision of treason. See *Treason*.
 Money. See *Coin*.
 Murder. See *Homicide*.
 Muster. *Soldiers, Militia*.

Mute.

Definition of, ——— 184, 185
 Stat. West. 1. 3 Ed. 1, c. 12. The punishment of felons refusing lawful trial ——— 185

Commentary on the foregoing act — 185—191
 Naval stores. See *Stores*.
 Navigable rivers. See *Rivers, Navigation*.
 Needle-work. See *Buttons*.
 Nets. See *Game*.
 News-papers. See *Stamps*.
 Night-walkers. See *Surety*.
 Noblemen. See *Peers*.
 Non compos. See *Lunaticks*.
 Nonconformists. See *Dissenters*.

Northern Borders.

Stat. 4 Jac. 1, c. 1. Evil customs settled, be not presently to be extirpated ——— 191
 The difference of the laws, trials and proceedings in cases of life between the justices of England and Scotland ——— 192
 Trials of felonies committed by Englishmen in Scotland—Witnesses allowed to the party arraigned—The prosecutor and witnesses shall be bound to give evidence—The accessory shall be tried, though the principal be not convicted or attainted ——— ib.
 Of how much freehold every juror returned to try an offender shall be—Challenge for want of freehold—What an Englishman committing a felony in Scotland, shall forfeit, and what not—A like act shall be made in Scotland—Binding of the complainant and witnesses to give evidence against any offender in Scotland ——— 193
 Scottishmen coming into England to give evidence against offenders, shall be free from arrests—The offence shall be alledged in the indictment, where it is done—He that is once tried, shall not be afterwards called in question for the same offence—No Englishman shall be sent out of England to receive his trial in Scotland. Altered by 7 Jac. 1, c. 1, and enforced by 13 & 14 Car. 2, c. 22. 194
 The jurors may allow or reject the witnesses—Trial of a peer by his peers ——— 195
 Stat. 7 Jac. 1, c. 1. If an Englishman shall commit felony in Scotland, and then fly into England, the justices may send the offender into Scotland to be tried ——— 196
 Stat. 13 & 14 Car. 2, c. 22, concerning moistrappers ——— 197
 Stat. 18 Car. 2, c. 3. Clergy taken away from notorious thieves in Northumberland and Cumberland ——— 199, 200
 Stat. 29 & 30 Car. 2, c. 3. The justices of peace shall take security of such as they employ to answer the damages sustained by their neglect ——— 200
 Books shall be kept in market-towns for entry
 6 X 2
 of

of goods stolen—The justices of peace shall yearly, or every two years appoint persons to be employed in the service—The persons to be employed shall take the sacrament and the oaths of allegiance and supremacy, and make the declaration appointed by 25 Car. 2, c. 2. — 201
Stat. 6 Geo. 2, c. 37, for making perpetual 13
& 14 Car. 2, c. 22. — ib.

Nusance.

What it is, and what shall be deemed a nusance 203, 205
Of the indictment for a nusance; how a nusance is to be removed or abated; and how the offence is punishable — 205, 207

Oaths.

Oath what, power of administering, &c. 207, 208
Stat. 25 Car. 2, c. 2. All persons that shall bear any offices or places of trust under his majesty, &c. must take the oaths of allegiance and supremacy, and the following oaths, &c.—When and where to appear and make oath 208, 209
This act extended to deputies by 1 Geo. 1, stat. 2, c. 13, s. 18.—To receive the sacrament according to the usage of the church of England — 209
All persons to be admitted into any office, &c. after the first day of Easter term, to take the said oaths, &c. — ib.
A certificate to be delivered into court, of his receiving the sacrament—Whosoever shall refuse to take the oaths shall be adjudged incapable of any other office—No person shall execute any office, after refusal to take the oaths—Shall not prosecute any suit in law or equity, or be guardian to any child, or executor, &c. — 210
The names of persons taking the oaths, where to be registred—The fees to be allowed 211
Upon tender made to the courts, they are obliged to administer the oaths—No person not bred up in the popish religion by his parents shall breed up or suffer his children to be bred up in the popish religion — ib.
At the taking of the oaths to subscribe the declaration following, &c. — ib.
A register to be kept of the subscription—This act not to extend to peerage, or creation-money, imposts, pensions, &c. or offices of inheritance, or to make void any pension granted to any person instrumental in preserving the king at Worcester — 212
Popish officers who have offices of inheritance, must appoint deputies who must take the oaths, &c. and subscribe — ib.
The peers may take the oaths, &c. in parlia-

ment—A saving for married women, &c.—Any person forfeiting his office by virtue hereof, may upon taking of the oaths, &c. be capable of a new grant thereof — 213
Not to extend to non-commission officers in the navy, if they subscribe the declaration—A saving for the pensions granted to the earl of Bristol and his lady—Not to extend to constables, tythingmen, church-wardens, &c. or private officers — ib.
Stat. 30 Car. 2, st. 2, c. 1. For these oaths, see 1 W. & M. sess. 1, c. 1, s. 3, &c.—The declaration to be subscribed by papists 214
This declaration to be subscribed by all professed papists at their age of eighteen, by 1 Annæ, stat. 1, c. 32, sect. 7. — ib.
The time and place of taking the oaths, and making and subscribing the declaration 215
Members of parliament not swearing and declaring, as aforesaid, and recusants convicted, forbidden the king's or queen's presence ib.
The penalty upon members of parliament offending contrary to this act — ib.
Either house of parliament may cause any of their members to swear and subscribe, as aforesaid — 216
The places of members of the house of commons disabled to vote, shall be void, and writs issue out for new elections — ib.
The king's and queen's sworn servants shall swear as aforesaid, and make and subscribe the said declaration — ib.
A provision for the queen to have eighteen popish servants — 217
Such as have licence from six privy counsellors, may come to the king's or queen's presence, notwithstanding this act — 217, 218
Offenders against this act that shall take the said oaths, &c. shall be discharged of all penalties, &c. — 218
Stat. 7 & 8 Will. 3, c. 34. Quakers instead of an oath to make the following affirmation ib.
Which is to be of the same force in law as an oath—Penalty on false affirmation — 219
If quakers refuse to pay tithes, &c. justices, on stating what is due, may compel them thereto, if the sum be under 10l.—Persons aggrieved may appeal to the quarter-sessions, who are finally to determine — ib.
If judgment be continued, to give costs—No judgment to be superseded—No distress till appeal be determined—Quakers not to be evidence in criminal causes, &c. — 212
Stat. 1 Geo. 1, st. 2, c. 13. All officers, civil or military, &c. in Great Britain, &c. all ecclesiastical persons, &c. all schoolmasters, &c. all serjeants at law, &c. residing within thirty miles of London, shall take the following oaths in one of the courts at Westminster, &c. — 222

Persons

I N D E X.

Persons in Scotland refusing to take the abjuration (or being quakers to make the affirmation) are incapacitated to vote at elections for members of parliament, &c.—Heads, &c. of colleges, &c. in Scotland, to take the oaths—Not to extend to persons beyond sea, who take the oaths in three months after they return—Penalty of refusing the oaths 226

Penalty of acting as officers, &c. not having taken the oaths—Persons taking the oaths to pay 2s. and a register to be kept to enter their names 227

Two justices, &c. may tender the oaths to suspected persons ib.

And certify the refusal to the next sessions, to be thence certified in the chancery, &c. and persons refusing, to be adjudged popish recusants convict 227, 228

Punishment of persons summoned by justices, and refusing to appear and take the oaths 228

Heads, &c. of colleges, &c. in Oxford and Cambridge, not taking the oaths; and the person in whom the right of election is, not electing some proper person in his place, the king may nominate, &c. 229

The king's-bench may issue a mandamus to compel the admission of a person so named ib.

Officer having forfeited may have his office again, on taking the oaths ib.

This act shall not extend to persons beyond sea, who shall take oaths in three months after their return 230

After Sept. 29, 1715, no member of either house of parliament shall be capable of voting, &c. till he has taken the abjuration ib.

Punishment of members presuming to vote, &c.—This act not to extend to officers of inheritance, if a deputy be substituted who shall qualify himself, &c. ib.

Such offices in Scotland not forfeitable, but according to the laws there—This act not to extend to the office of any tythingman, &c. —Nor to any who have taken the oaths since his majesty's accession, except on account of some new office—Persons obliged by any law to receive the sacrament, &c. shall continue obliged—Persons taking the oaths, &c. before Dec. 1, indemnified from all penalties, &c. 231

Likewise all who have taken the oaths since his majesty's accession—No person who has forfeited any office, &c. shall be restored if another be promoted—Popish recusants convicted by this act, shall be discharged on taking the oaths This abjuration to be taken in lieu of the former 232

Where any quaker is permitted to make the declaration of fidelity required by 1 W. & M. sess. 1, c. 18, or the affirmation pre-

scribed by 7 & 8 W. 3, c. 34, or to make the effect of the abjuration enjoined by 1 Geo. 1, stat. 2, c. 6, he shall make the following declaration of fidelity 234

And instead of the affirmation 7 & 3 W. 3, make the following affirmation 235

The persons required to administer the former declaration, shall administer the same in the words appointed by this act 236

The declaration, &c. appointed hereby, to be of the same force, as if taken in the forms prescribed by the former acts—Persons convicted of false affirming, &c. liable to the pains of wilful perjury ib.

How Jews are to take the abjuration oath 237

Stat. 22 Geo. 2, c. 46. Affirmation of quakers allowed in all cases in lieu of an oath required by act of parliament—Penalty on false affirming—Not to extend to criminal cases, &c. 238

Office.

Definition, nature and several kinds of offices 238, 241

Stat. 13 Car. 2, c. 1, For the regulating of corporations—Commissions to issue for England, Wales, and Berwick 241

Corporation charters saved—Magistrates to take and subscribe to certain oaths—Oaths of allegiance and supremacy—The oath to be taken 242

Those who refuse the oaths removed—Commissioners have power to remove any at their wills, though they offer to take their oaths 242, 243

Their power to restore any magistrate unduly removed 243

Commissioners impowered to give the oaths—Who shall give the oath after the commissions are determined ib.

The commissioners to keep remembrances, and give them to the town-clerks, &c. ib.

None to be a magistrate, unless he take the oaths and receive the sacrament 244

How long the commissioners power shall continue—Commissioners sued may plead the general issue, and recover treble costs—Reversions of offices in London, saved — ib.

Stat. 5 Geo. 1, c. 6. Members of corporations are confirmed in their offices, though they have not taken the said oath and declaration; and indemnified, &c. 245, 246

Members of corporations, &c. who have omitted to take the sacrament, as enjoined by the said act, shall nevertheless continue in their offices, and be freed from all incapacities, &c. arising from such omission 246

Stat. 2 Geo. 2, c. 31. Persons beyond the sea may qualify themselves within four months after their arrival 250

Persons.

- Persons within the times hereby limited, neglecting to qualify themselves, liable to the disabilities in 1 Geo. 1, stat. 2, c. 13 — *ib.*
- Times limited for masters, fellows, &c. in the universities, to qualify themselves — 251
- Stat. 9 Geo. 2, c. 26. All persons admitted into any preferments or places after 1 Aug. 1736, to take the oaths, &c. within six months after admission — 251, 254
- Persons beyond the seas allowed to take the said oaths, &c. six months after their return —
- Persons neglecting to take the oaths, &c. in the time herein limited, to incur the penalties inflicted by the said acts — All the powers in the recited acts to continue in full force, except only as to the alteration made by this act with regard to time — 255
- Stat. 31 Geo. 2, c. 22. Employments of profit, pensions, and gratuities, exceeding 100*l. per annum*, to pay 1*s. per pound* — Duty on such as are payable at the Exchequer, to be deducted and stopt by the officers there; and such as shall be deducted at other public offices, to be paid over into the Exchequer; and such as shall be deducted in Scotland, to be paid to the receiver-general in Edinburgh, and by him into the Exchequer at Westminster — 256, 257
- Officers of the Exchequer to keep a separate and distinct accounts of the money retained and received by them — Profits of offices to be computed, and pay as they were rated to the last land tax — Profits to be deemed rated to the land-tax, at so much only, as the entire sum charged exceeds the salary — Commissioners of the land-tax to put so much of this act in execution as relates to the duties upon perquisites of offices — 257
- Commissioners to meet on or before the 3d of July yearly; and subdivide themselves, &c. — Commissioners at their general meeting, or within eight days after, to rate the amount of the duty payable on all offices and employments of profit, in proportion to the value at which they stand rated to the last land-tax — Duplicates thereof to be signed, &c. by them, and one delivered to the collectors, &c. with warrant for collecting — 258
- Persons aggrieved by being over rated, may appeal to the barons of the Exchequer — Collectors to permit inspection of the rates — Notice to be given them of intention to appeal — Appeals once heard and determined, to be final — 258, 259
- A duplicate in parchment of the rate to be delivered to the receiver-general; and one to the remembrancers office, by the first day of Hilary Term, or twenty days after (all appeals first determined) — Duty to be raised, collected, and paid, in like manner, and with such allowances, and under such penalties, &c. as the land-tax of this session — 259
- Their royal highnesses the princess dowager of Wales, and prince of Wales, not chargeable, nor their officers or servants; nor his royal highness the duke of Cumberland, nor the princess royal, nor princess Amelia — Perquisites of offices and employments to pay where last assessed — First half-yearly payment to be made on or before 10 October, and the last on or before 5 April yearly — 260
- Receiver-general, within a month after receiving the full sum charged, to give the commissioners a receipt, which shall be a full discharge for payment — Receivers-general, within twenty days, to pay the monies into the Exchequer — 260, 261
- Collectors keeping the money in their hands, or paying it otherwise than to the receiver-general, forfeit 40*l.* — Receiver-general, or his deputy, paying the money otherwise than into the Exchequer, forfeit 500*l.* — 261
- Stat. 32 Geo. 2, c. 33. Sums deducted for the duties upon offices and pensions in England, to be paid over to receivers to be appointed by his majesty; 3*d.* in the pound allowed him for his trouble — Security to be given by him — Deductions of the duties to be paid over quarterly to the receiver, and by him, within the quarter following, into the Exchequer — 262
- An account of the salaries, fees, and pensions, &c. to be delivered to the receivers; and entered by them in proper books — The monies which have been, or ought to have been deducted under the said act, to be accounted for to the said receivers, and passed by them — 263
- Disputes concerning the charging any particular office or pension, or sums to be deducted thereout, to be heard and determined by the barons of the Exchequer in England or Scotland respectively — *ib.*
- Copy of the complaint to be given to the person complained against, and to be determined in a summary way — *ib.*
- The perquisites of office to be ascertained by the commissioners of the land-tax, distinct from the salary, and independent of any former valuation. Offices, &c. where the perquisites exceed 100*l.* to be rated 1*s.* in the pound — 264
- Receivers to transmit to the commissioners of the land-tax, an account of all such offices, &c. the fees and salaries whereof do not exceed 100*l. per annum*; and such as, together, shall be found to exceed 100*l. per annum*, are to be charged with the duty of 1*s.* in the pound — 265
- In future assessments to the land-tax, offices not to be rated higher than they were in 31 Geo.

INDEX.

Geo: 2. — Meaning of the word *perquisites* ascertained ————— 265
 Commissioners of the land-tax not liable to penalties for acting in the cases here mentioned, provided they withdraw during the rating of their respective employments—Charitable donations exempted from duties; as also officers of the army, and the hospitals; and the pensions, annuities, and rents, &c. granted in fee, or fee-tail, &c. by former kings and queens of England; and offices in both universities ————— 265, 266
 Orchards. See *Wood*.
 Overseers of the Poor. See *Poor*.
 Outlawry. See *Process*.
 Pamphlets. See *Stamps*.
 Paper. See *Excise*.
 Papists. See *Popery*.
 Parchment. See *Stamps*.

Pardon.

By whom a pardon may be granted; and in what cases, and for what offences it may be granted ————— 267, 270
 Stat. 27 Ed. 3, ft. 2, c. 2. A pardon granted upon a false suggestion shall be disallowed 270
 Stat. 13 Rich. 2, ft. 2, c. 1. No pardon of treason or felony shall pass without warrant of the privy seal ————— 271
 Stat. 16 Rich. 2, ft. 2, c. 1. In a pardon of murder, treason, or rape, the offence shall be comprised—A confirmation of the first part of the statute of 13 Rich. 2, stat. 2, c. 1, and a repeal of the latter part thereof—The forfeiture of him at whose suit the pardon aforesaid is obtained ————— 272
 Stat. 5 Will. & Ma. c. 13. Persons pardoned, even feme coverts and infants, to give security for good behaviour for seven years — 273, 274

Parliament.

Parliament, what ————— 274, 275
 Of the original and antiquity of parliaments ————— 275— 78
 Stat. 7 & 8 Will. 3, c. 15. Parliament to sit for six months after the king's death, unless sooner dissolved by the successor—In case of no parliament, the last preceding to act ————— 278
 Stat. 12 & 13 Will. 3, c. 3. Action may be commenced against peer or member of parliament, &c. in the interval of parliament, &c. and after prorogation, &c. court may give judgment ————— 279
 Person may have process against peer, &c. after dissolution of parliament; and may exhibit

bill against any peer or member, &c. and sequester the party's estate, but not arrest his body ————— 279, 280
 Plaintiff prevented from prosecution by privilege of parliament, not to be barred by any statute of limitation, &c.—No action, &c. against the king's immediate debtor, &c. shall be stayed by privilege of parliament; but person not liable to be arrested, &c. — 280
 Stat. 9 Ann. c. 5. No person shall be a member, who hath not an estate, &c. clear from incumbrances, and lying in England, viz: Every knight of a shire 600l. a year. Every citizen, &c. 300l. a year: any person returned, who hath not such an estate, the return shall be void—This act not to extend to the eldest son of a peer, or of a person qualified to serve as a knight of a shire—The universities may elect and return members as formerly ————— 281
 None to be qualified by virtue of any mortgage, unless the mortgagee have been in possession seven years before the election—Every candidate, at the request of another candidate, or of two of the voters, shall take the following oath ————— 282
 If the candidate be for a city, &c. the oath shall relate only to 300l. *per annum, mutatis mutandis*—The oath to be administered by the sheriff, &c. who shall, within three months after the taking thereof, certify the same into the Queen's Bench or Chancery, or forfeit 100l. one moiety to the queen, the other to him who will sue, &c. with full costs of suit—Candidate refusing to take the oath, his election to be void ————— 282, 283
 1s. only for administering the oath, 2s. for certificate, and 2s. for filing; penalty 20l. 283
 Stat. 10 Ann. c. 23. All conveyances fraudulently made to qualify any person to vote, (subject to conditions to defeat the same) shall be discharged of such conditions, &c.—And all bonds, &c. for defeating such estate, shall be void—Persons making, &c. such conveyance, or voting by colour thereof, shall, for every such offence, forfeit 40l. ————— 283, 284
 No persons shall vote for a knight of shire, in right of lands which have not been charged to public taxes, &c. and for which such person has not received the rents for one year before the election; unless such lands came to him within that time by descent, &c. 284
 The oath required by the act 7 W. 3, c. 25, repealed ————— 285
 Freeholders to be sworn—Oath to be administered by the sheriff, &c.—Freeholder committing wilful perjury, or any person suborning him so to do, shall incur the penalties of, Eliz. c. 9—The elector's name, &c. to be entered—

tered—Poll-books to be delivered upon oath to the clerk of the peace, to be kept among the records of the sessions ——— 285, 286

Sheriff of Yorkshire to appoint seven tables for taking the poll, at the costs of the candidates ——— Sheriff of Cheshire to do the like ———

Quakers declaring the effect of the oath on their affirmation, as directed by 7 & 8 W. 3, c. 34, shall be admitted to vote—And affirming any thing else shall incur the penalties before enacted against perjury ——— 286

Electors of parliament men to take the following oath, if demanded—Electors oath—

Presiding officer to administer it, on forfeiture of 50l. ——— 287

Sheriff or other returning officer admitting any to be polled, before sworn to forfeit 100l. voters to incur the like penalty—Returning officer, after reading the writ, to take the following oath—What votes shall be deemed legal—Penalty of wilful perjury—Persons convicted never capable to vote ——— 288

Persons taking money or reward for their vote, &c. forfeit 500l. and disabled to vote in any election ——— 288, 289

Offenders in twelve months after the election discovering others indemnified—This act to be read by the sheriff, &c. after reading the writ, and at the quarter-sessions after Easter—Wilful offence forfeits 50l. ——— 289

Prosecution to commence within two years 290

Stat. 11 Geo. 2, c. 24. Persons may prosecute actions against members of parliament, in the intervals of session ——— 290

Members not liable to be arrested during privilege—The courts of great sessions in Wales, and sessions in counties palatine to proceed against members, and the courts at Westminster ——— 291

Plaintiffs not barred or nonsuited, nor process against the king's debtor to be stayed, by privilege of parliament; but the persons not to be arrested—Proviso ——— 291, 292

Stat. 18 Geo. 2, c. 18. Instead of the oath by 10 Ann. c. 23, another is appointed for freeholders ——— ibi.

By whom to be administered—Penalty of perjury or subornation, the same as by 5 Eliz. c. 9, and 2 Geo. 2, c. 23. ——— 293

In part repealed—Qualification of electors—Exception for voting in right of chambers or offices—Duplicates of the land-tax assessments to be kept among the records of the sessions; to be inspected, or copies taken—Further qualification of electors ——— 294

No public tax to be deemed a charge on a freehold—Booths to be erected at the expence of the candidates, proportioned to the hundreds, &c. and not exceeding fifteen. Sheriff to appoint a clerk at each book for polling, at the candidate's expence ——— 295

List of towns, &c. for each booth; of which copies to be given at 2s. each—Voting at each booth to be regulated by the list—Exception—A cheque book for every poll book allowed each candidate—No sheriff to adjourn a county court longer than sixteen days ——— 296

Sheriff, &c. offending, to be prosecuted—No noli prosequi or cessat processus to be granted ——— The manner of proceeding in case of offence against this act—Limitation of actions ——— Statutes of jeofails, &c. extended to proceedings on this act ——— 297

Privilege of parliament ——— 298

Partition.

Partition, what ——— 298

Stat. 8 & 9 Will. 3, c. 31. After process of pone or attachment returned on writ of partition, if the tenant do not enter an appearance within fifteen days, court may proceed to examine the demandant's title, give judgment by default, and award a writ to make partition ——— 299, 300

If tenant or other shall in one year after judgment entred, or in case of infancy, &c. shew a good matter in bar of such partition, &c. the court may set aside such judgment—

Person appealing to pay costs ——— 300

No plea in abatement to be admitted—Where high sheriff cannot be present at the execution of a judgment in partition, under sheriff in presence of two justices may proceed thereupon—Tenants before the division, to be tenants under the same conditions, &c. ——— 300

And landlords to make good to their tenants their said parts, as before partition made—

Sheriffs, under sheriffs, &c. to give due attendance for executing writs of partition—

Demandant not paying sheriff, &c. his fees, court to award the same ——— 301

Peers.

Peers, who ——— 301

Of the privilege of peers; and proceedings at law and in equity against them ——— 302

In what cases peers are to be sworn; and for what degraded ——— 303

Of the trial of peers, and the order and process of trial ——— 304, 306

Stat. 1 Ed. 6, c. 12. A lord of the parliament shall have his clergy for the first offence of felony, though he cannot read, and without burning ——— 306

Perjury and Subornation.

Definition of ——— 307

What is perjury by the common law, and how restrained and punished ——— ibi. 309

Stat.

Stat. 5 Eliz. c. 9. What punishment shall be inflicted upon persons who commit wilful perjury ————— 309
 The penalty for procuring of wilful perjury 310
 The penalty of him that doth commit wilful perjury ————— 310, 311
 Who shall have forfeitures, and by what means — Who shall have authority to hear and determine the offences aforesaid — This statute shall be proclaimed at all assizes — 311
 This act shall not extend to any court ecclesiastical — Process served upon witnesses to testify — The authority to punish perjury, given by the statute of 11 H. 7, c. 25, saved — 312
 Opinions on the foregoing act ————— 313
 Stat. 23 Geo. 2, c. 11. What shall be sufficient in indictments of perjury ————— 314
 Informations, &c. for subornation of perjury — Justices of assize, may direct prosecutions against persons examined before them, being guilty of perjury, and assign the prosecutor council — The prosecution to be carried on without fees — The clerk of assize to give the prosecutor a certificate ————— 315
 Personating Bail. See *Bail*.

Petition.

Stat. 13 Car. 2, c. 5. Tumultuous and disorderly preparing petitions, a great occasion of the late wars and calamities — No person after the first of August, 1661, shall solicit or procure any petition, &c. for altering any established law in church or state ————— 316
 Petit larceny. See *Larceny*.
 Petit treason. See *Treason*.

Pewter and other Metals.

Stat. 19 Hen. 7, c. 6. Several evil practices used by pewterers and brasiers ————— 317
 Of what goodness pewter and bras ought to be — Of what assize hollow ware of pewter made of ley-metal shall be — The makers shall set on their marks — The forfeiture for defaults — The penalty for using of false beams and weights in selling or buying of pewter and bras ————— 318
 The punishment of the offender if he be not able to pay the money forfeited — Searchers of pewter and bras within a city or borough, to be appointed by justices of the peace 319
 Stat. 4 Hen. 8, c. 7. In what places only pewter or bras shall be sold or changed — Of what goodness pewter and bras ought to be — Hollow wares made of pewter ley metal 320
 The makers of pewter vessels shall mark the same — The penalty for using false beams and weights about pewter or bras — Searchers of pewter and bras shall be appointed — 321

Vol. III. No. CXI.

The statute of 19 H. 7, c. 6, confirmed and made perpetual — Searchers of tin or pewter vessels shall be appointed — This act shall not be prejudicial to the king's grants of liberties ————— 322
 Stat. 25 Hen. 8, c. 9. The cause why the trade of pewterers did encrease, and now doth decay in this realm — No person shall buy any wares made of tin out of the realm — 323
 Officers may search and seize wares brought into this realm contrary to this statute — No pewterer shall take a stranger born to be apprentice or journeyman — No stranger born shall work any pewter or tin — No pewterer shall teach his trade in a foreign country 324
 Licences and placards made to hawkers for pewter shall be void — Pewter shall be sold in fairs and markets, and in the owners houses, and not elsewhere — Who shall have the forfeitures, and by what means they shall be recovered ————— 325
 Stat. 33 Hen. 8, c. 4; 25 H. c. 8, 9. None shall buy wares made of tin out of the realm 325
 Searchers of wares made of tin brought into this realm — No pewterer shall take a stranger born to be his apprentice, &c. — No stranger born shall work any pewter or tin — No pewterer shall teach his trade in a foreign realm ————— 326
 Licences and placards made to hawkers of pewter shall be void — Pewter and bras shall be sold only in fairs or markets, or in their own houses — Who shall have the penalties forfeited by the statute of 4 H. 8, c. 7, and 25 H. 8, c. 9, and by what means they shall be recovered ————— 327
 The penalty for hindring of searching or seizing of pewter, &c. ————— 328
 Stat. 2 & 3 Ed. 6, c. 37. No person shall carry bell-metal, &c. out of this realm — The penalty for carrying or for shipping to carry any bras, latten, &c. beyond the sea, in part repealed by 5 & 6 W. & M. c. 17. — What he must do that shippeth metals in one port of this realm, to carry to another — 329
 The penalty of a customer offending — The penalty of the master of a ship which carrieth the metal — No metal shall be laden but where there is a customer — A confirmation of the stat. 33 H. 8, c. 7 ————— 330

Physicians and Surgeons.

Stat. 5 Hen. 8, c. 6. The causes why surgeons have been exempt from bearing of armour, or other services — The surgeons of London shall be exempt from bearing armour or parish offices, &c. ————— 331
 Stat. 32 Hen. 8, c. 40. The physicians in London shall be discharged to bear certain offices there ————— 332
 6 Y Stat.

Stat. 1 Ma. Sess. 2, c. 9. Other magistrates shall assist the physicians in their search — 333
 Stat. 6 Will. 3, c. 4. Apothecaries within London, and seven miles thereof, exempt from offices — ib.
 Country apothecaries, who have served seven years, exempted from offices—Apothecaries already chosen not exempted — 334
 Stat. 18 Geo. 2, c. 15. Surgeons exempted from parish, ward, and leet offices, and juries — 335

Pickpocket. See *Larceny*.

Pigeons. See *Game*.

Pillory and Tumbrel.

Pillory and Tumbrel, and who ought to keep them, &c. — 336

Plague.

Stat. 1 Jac. 1, c. 31. Several provisions made for those that be infected with the plague—Taxing the inhabitants for relief of the sick of the plague—The penalty of any party taxed refusing to pay, and having no goods 337
 A provision if the inhabitants of the town infected be not able to relieve the sick—A provision if the infection shall be where there are no justices of peace—The taxes assessed shall be certified at the next quarter-sessions—The forfeiture of officers making default to levy the money assessed—An infected person commanded to keep his house, disobeyeth 337, 338
 Attendants shall be appointed upon the infected—The universities, cathedral churches, Eaton, Winchester college — 339
 Stat. 9 Ann. c. 2. All ships coming from places infected, to make their quarantine in such place, &c. as shall be directed by her majesty, &c.—No person shall go on board such ships without licence; and such ships, persons, &c. shall be subject to the orders of the queen, &c. — 340
 After the 25th of December, 1710, if any master, &c. shall go on shore, &c. or permit any person so to do, without licence, the ship, &c. shall be forfeited to the queen—Persons coming on shore, to be compelled to return on board, there to remain during the quarantine—Punishment of persons leaving such ship—Forfeiture, how to be applied — 340, 341
 Persons going on board such ship; and returning on shore, to be compelled to return on board again, there to remain during the quarantine — 341
 The person who takes care of the quarantine, may seize any boat belonging to the ship, and detain it during the quarantine—Punish-

ment of such person, suffering any seamen, &c. to quit such ship — 341, 342
 Watches to be kept to prevent persons from coming on shore, or going on board—After the quarantine is performed, and proof made thereof upon oath, and certificate given, the ship, &c. to be no longer detained — 342
 One shilling only to be paid for such oath and certificate, over and above the stamp duties—After the quarantine performed, the goods to be opened and aired — 342, 343
 Stat. 26 Geo. 2, c. 6. All vessels, persons and goods coming from places from whence the plague may be brought, subject to perform quarantine in such places as shall be appointed — 343
 Vessels infected, being to the northward of Cape Finistere, to proceed to the harbour of New Grimsby, and give notice of their case; to be transmitted to the secretary's office, &c.—Vessels not able to make Scilly, to remain in some road till orders arrive—Penalty of disobedience, death — 344
 When any place shall be infected, or orders made, officer to go off to the vessel, and interrogate the master concerning the ship's cargo and voyage, health, &c. — ib.
 If the infection shall be on board, &c. the vessel to be obliged to perform quarantine—If the vessel shall come from any place infected, or have the infection on board, the master concealing the same, guilty of felony; and not making a true discovery in other particulars, to forfeit 200l. — 345
 Master of a vessel performing quarantine, to deliver to the officer the bill of health, and manifest of the British consul; with the log-book and journal, under penalty of 500l. ib.
 Master, &c. quitting the vessel before quarantine performed, unless by licence, or not going to the place appointed, to forfeit 500l. and persons quitting the vessel to be obliged by force to return, and to suffer imprisonment, and forfeit 200l. — 346
 Lazarets may be erected on common or private grounds, making satisfaction to the proprietors—In case of difference, the same to be settled by a jury at the quarter sessions — 346, 347
 Officers to oblige all persons to comply with orders — 347
 Persons refusing to perform quarantine, &c.—Officers may compel them by force—Persons, escaping, &c. guilty of felony—Officers to enforce obedience — 347, 348
 Sound persons entering a lazaret, &c. where the infection is, to be obliged to continue there, and perform quarantine; and if he escape to be guilty of felony — 348
 Officer

Officer neglecting duty, to forfeit his office, and 100*l.* and if he embezzle any goods, to pay treble damages ——— 348, 349
 Goods specified to be liable to quarantine—
 On proof that the vessel hath performed quarantine, that the same is free from infection; and a certificate from the officer, &c. the ship and men to be discharged ——— 349
 No fee to be taken—Orders to be complied with for the airing of goods; and on certificate and proof, the goods to be discharged—Officer demanding a fee for such oath or certificate, to forfeit 100*l.* ——— 350
 Superintendant of the quarantine, or watchman, acting contrary to their duty, or officer giving a false certificate, to suffer death ——— 350, 351
 Persons concealing or clandestinely conveying letters or goods from any ship under quarantine, or from any lazaret, to suffer death—During the infection in the places herein mentioned, small vessels to give security not to touch at any country which shall be mentioned in a proclamation ——— 351
 Vessels sailing without such security to be forfeited; and the master and crew to forfeit 20*l.*—Orders concerning quarantine to be read in churches, &c. ——— 352
 Plate. See *Excise*.

Players.

Stat. 10 Geo. 2, c. 21. Persons acting plays, &c. in any place where they have not a settlement, or without authority, &c. to be deemed vagabonds, and forfeit 50*l.*—No new plays, or additions to old ones, to be acted, unless a copy thereof be sent to the lord chamberlain, &c. ——— 354
 And persons acting against his prohibition, &c. to forfeit 50*l.* and their licence ——— 355
 No plays to be acted but in Westminster, or places of his majesty's residence ——— *ib.*
 Penalties how to be recovered, &c. ——— *ib.*
 Persons acting in public houses included in this act—Limitation of actions—General issue Treble costs ——— 356
 Pluries Capias. See *Process*
 Poison. See *Homicide*.

Polygamy.

Polygamy what ——— 357
 Felony to marry a second husband or wife, the former being living ——— *ib.*
 The husband or wife being absent seven years from the other ——— *ib.*
 To what persons this statute shall not extend—No corruption of blood, loss of dower or inheritance ——— *ib.*

Lord Coke's commentary on the preceding act 358, 359
 Pound. See *Game*.

Poor.

Stat. 43 Eliz. c. 2. Who shall be overseers for the poor; their office, duty, and account, &c.—Who shall be taxed towards the relief of the poor—A convenient stock shall be provided to set the poor on work—The names of such as receive collection to be registered in a book—The overseers shall meet once every month ——— 360
 The overseers account—The overseers forfeiture for absence or negligence—A provision where the inhabitants of any parish are not able to relieve the poor—Church-wardens, &c. may make a rate to reimburse themselves—A remedy for the levying of the money assessed—Imprisonment in default of distress—Imprisonment of those that will not work—Refusers to count, imprisoned—Binding of children apprentices ——— 361
 Building of houses on the waste for the poor to inhabit—A remedy for them who find themselves grieved with any tax—Poor persons relieved by their parents or children ——— 362
 Officers of corporate towns have the authority of justices of peace—Aldermen of London—A parish extending into two counties, or into two liberties—The justices forfeiture for not naming of overseers—How the forfeiture shall be levied and employed ——— 363
 The justices shall rate every parish to a weekly sum—The penalty for refusing to pay money taxed—Relief for the prisoners of the king's-bench, marshalsea, hospitals—Treasurers ——— 364
 Lord chief-justice of England, knight-marshal—The forfeiture of the church-wardens or high constables offending—How the surplussage shall be bestowed—The penalty for refusing to be treasurer, to give relief, or account—This act to take effect at Easter—For what time, and to what purpose the stat. of 39 El. c. 3, shall be put in execution 365
 The island of Fowlness in Essex—The defendant's plea in a suit commenced against him upon this statute ——— 366
 Stat. 7 Jac. 1, c. 5. The plea of an officer, impleaded for the execution of his office—Defendant allowed double costs ——— 367, 368
 Stat. 21 Jac. 1, c. 12. Church wardens and overseers of the poor shall be comprehended within the purview of 7 Jac. 1, c. 5.—An action brought against an officer, shall be laid in the county where the fact was committed—The defendant shall have full costs ——— 369

- Stat. 13 & 14 Car. 2, c. 12. The occasion of increase of poor—Poor people going from one parish to another, how to be settled, coming to any tenement under ten pounds yearly value—Persons aggrieved may appeal to the quarter-sessions ————— 368
- Persons going to work in harvest—Corporations or work-houses in the cities of London and Westminster, Middlesex, Surry ————— 369
- President, deputy-president, treasurer and assistants for Middlesex and Surry, how to be elected—City of Westminster ————— 370
- The powers of the said president and governors of the said corporations—A stock for supply of the work, how to be provided in London, Westminster, Middlesex, Surry ————— 371
- Stocks formerly in London for the relief of the poor how to be paid—Power to make orders and by-laws ————— 372
- Power to chuse and entertain officers—All sheriffs, &c. to be assisting to the said corporation and their officers—Constables, how made in default of holding court-leets—Apprehending rogues and vagabonds ————— 373
- Rogues and vagabonds apprehended at the confines of any county—How to be dealt withal ————— 374
- Persons sued for matters in this act, may plead the general issue—Lancashire, Cheshire, Derbyshire, Yorkshire, Northumberland, Durham, Cumberland, Westmorland—Power of the justices to transport rogues and vagabonds ————— 375
- Stat. 1 Jac. 2, c. 17. Settlement to be accounted from notice in writing ————— 376
- Stat. 3 Will. & Ma. c. 11. The note of settlement must be read in the church, and registered in the poors book—No soldier, &c. to have settlement before dismissal—Penalty upon church-wardens refusing to read or register ————— 377
- Serving as officer, or paying parish duties, a settlement—Service for a year, of person without wife or child, a settlement—Apprenticeship a settlement—Appeal from justice of peace to quarter-sessions, whose order shall be final—Church-warden must receive a person removed by warrant of two justices of peace, upon 5l. penalty ————— 378
- Persons aggrieved by such removal may appeal to sessions—A register to be kept of the admittances of the poor—Parishioners yearly in Easter week shall make a list of their poor—None but those in the list to receive alms, except by order of justice of peace, &c. ————— 379
- Parishioners, except alms-men, may be evidence against church-wardens, &c. of their mispending the poors money ————— 380
- Stat. 8 & 9 Will. 3, c. 30. Persons coming to inhabit in any parish or place, and bringing with them a certificate under the church-wardens hands, &c. owning them to be inhabitants of such other parish, &c. the said other parish to provide for them whenever they ask relief of the parish to which such certificate was given ————— 380
- Persons receiving alms to wear a badge on the shoulder of the right sleeve—Penalty on refusing to wear the badge—Penalty on church-wardens, &c. relieving poor persons not wearing such badge ————— 381
- Justices, on appeal to them concerning the settlement of any poor person, to award costs—Person ordered to pay costs living out of the jurisdiction, justice of the county, &c. where such person inhabits, may cause the money to be levied; if no distrefs, offender to be committed to gaol—Single persons not deemed to have a good settlement in any parish under one year's continuance—Appeal against any order for removal of poor person to be determined at the quarter-sessions ————— 382
- Stat. 9 & 10 Wil. 3, c. 11. No person adjudged to have a legal settlement in any parish, unless he lease a tenement of 10l. per annum, or execute some parish office ————— 384
- Stat. 12 Ann. c. 18. Person bound apprentice, or being a hired servant, to one who came into a parish by certificate, shall not gain a settlement there by reason of such apprenticeship, &c. ————— 386
- Stat. 5 Geo. 1, c. 8. Church-wardens, &c. may by warrant from two justices, seize the goods, &c. of husbands and parents, who leave their wives and children upon the parish—Such warrant to be confirmed at quarter-sessions, who may make an order for sale, &c.—Church-wardens, &c. to be accountable to justices in sessions ————— 387
- Stat. 9 Geo. 1, c. 7. No poor to be relieved till oath made of a reasonable cause, or longer than the cause continues—Church-wardens, &c. may purchase, &c. houses to lodge or employ the poor in—Poor refusing to be lodged, &c. are not intitled to relief ————— 387, 388
- One parish, &c. being too small for such purchase, two may unite, &c.—Church-wardens, &c. of one parish may contract with those of another, &c. Settlement to be as before removal ————— 389
- Settlement, how to be acquired by purchase—Paying taxes to the scavenger, gains no settlement—Justices of St. Peter and hundred of Nassborough in Northamptonshire may determine appeals—Reasonable notice is to be given of appeals ————— 390
- Justices, how to relieve the appellant on undue removals ————— 391
- Stat. 3 Geo. 2, c. 29. Witness to certificates of settlements to swear that they saw the church-

I N D E X.

church-wardens, &c sign them ——— ib.
 Overseers to be reimbursed on reconveying certificate persons ——— 392
 Stat. 17 Geo. 2, c. 3. Poors rates to be published in the church—The rates to be inspected by any inhabitant, and copies taken —Penalty on not permitting any inhabitant to inspect, &c. ——— 393
 Stat. 17 Geo. 2, c. 37. Drained lands to pay parochial taxes—Justices in general quarter-sessions to hear and determine disputes ——— 394
 The poor to be maintained by the trustees 395
 Stat. 17 Geo. 2, c. 38. At what time parish officers shall make up their accounts—Books may be inspected, paying 6d. and copies taken, paying 6d. for three hundred words —Penalty on parish officer's not accounting as this act directs—On an overseer's dying, &c. two justices to choose another—Overseer removing, shall deliver his accounts to the church-warden, &c.—Executors of overseers to account in forty days—Persons aggrieved may appeal to the quarter-sessions 396, 397
 Proviso for corporations, &c.—How far justices shall give relief on appeals—Clause relating to warrants of distress—Appeal to quarter sessions—Clause to prevent vexatious actions against overseers ——— 398
 Plaintiffs recovering, to have full costs—Proviso in case of irregularity—Succeeding overseers to levy arrears, to reimburse the former—Clause concerning persons removing out of parishes—Copies of rates to be entered in a book, to be kept for public perusal—Penalty on parish officers not obeying this act—Power of overseers, where there are no churchwardens ——— 399, 400
 Stat. 31 Geo. 2, c. 11. Person bound apprentice by deed, &c. though not indentured, being first duly stamped, is intitled to a settlement where apprenticed—Recited act extended to servants employed in husbandry, though hired for a less time than a year 402
 Stat. 3 Geo. 3, c. 8. Officers, mariners, soldiers and marines, who have been at any time employed in the king's service since 29 November, 1748, and have not since deserted, and also the wives and children of such, are authorized to set up and exercise trades within any part of Great Britain or Ireland, without lett; and without being liable to be removed from thence to their last legal place of settlement, until they become actually chargeable to the parish; and if sued, upon pleading the general issue, they shall be acquitted, and be paid double costs of suit ——— 403
 Where any two justices for the county or place where they shall so set up, shall summon them to give evidence as to the place of their last legal settlement, they shall make oath

accordingly; an attested copy whereof shall be given them, which shall be admitted as evidence at the quarter sessions; and if summoned again, they shall not be obliged to take a fresh oath, but produce the former, or leave a copy thereof—Privileges of the two universities reserved ——— 404

I. Of the Appointments of Overseers.

No greater number than four overseers can be appointed ——— 404, 409
 A justice of peace, who was also a half pay lieutenant of marines, appointed overseer of the parish where he resides and acts, but excused ——— 409
 Settlement not gained in extra-parochial place, unless such place comes under the notion of a vill or town ——— 411, 414
 Settlement not gained in an extra-parochial place unless it be a town or village; and to constitute a village there must be a constable or tythingman ——— 414

II. Of Settlement by Apprenticeship.

Settlement may be gained by a parish apprentice hired out by the first master, by forty days residence with the second master 415, 418
 An apprentice assigned by his master's widow, thereby gains a settlement ——— 418
 An apprentice assigned by indorsement on the indenture, thereby gains a settlement ——— 420
 An apprentice, being assigned from the first to a second, and from the second to a third master, without the assent of the first master, gains a settlement by forty days residence with that third master ——— 421, 423
 An apprentice being assigned from the first to a second, and from the second to a third master, gains a settlement; and the consent of the second master includes that of the first 423
 Apprenticeship for four years only gains a settlement, notwithstanding 5 Eliz. c. 4, sect. 4. ——— 424, 429
 Apprenticeship to a mariner for four years only, and the indenture not enrolled pursuant to 5 Eliz. c. 5, or 2 & 3 Ann. c. 6, gains a settlement ——— 429
 A sum agreed to be given to clothe a boy to make him fit to go out apprentice need not be inserted in the indentures ——— 430
 Where the consideration money (which was only 6d.) was not inserted, the indenture was not void ——— 432
 Pauper bound apprentice to a certificate-person, and by him assigned to a third person, gains the assignee a settlement ——— 433
 The son of a certificate man may gain a settlement by apprenticeship in a third parish 435
 Apprenticeship to a certificate-man in a third parish, to which the master's certificate is not directed,

I N D E X.

directed, gains a settlement in such third parish — 436
 Apprenticeship to a certificate-man, who removes into another parish, gains a settlement in such parish — 439
 Apprenticeship to a certificate-man who removes into another parish, gains a settlement in such parish — ib.
 Settlement gained by apprenticeship, to a person who had got a certificate, after the expiration of such apprenticeship — 442
 Son gained a settlement by apprenticeship, in a place to which the father came by certificate, after a removal — ib.
 Settlement gained, where an apprentice was bound for seven years and served five, and then the indentures were exchanged — 446
 Settlement gained by apprenticeship with a second master; the first having given his consent to the apprentice's serving the second during the remainder of the term — 447
 Settlement gained after forty days habitation, notwithstanding the apprentice went away sick, with the consent of the master, and the indentures were mutually given up — 448
 Settlement gained by apprenticeship to a master of a ship, by lying in a parish forty days on board a ship — 449, 453
 Settlement gained, tho' the apprentice was told by his master, two years before the expiration of the term, to go about his business; and accordingly he went away, and hired himself to several masters; but the indentures were not cancel ed — 454
 The settlement of an apprentice, is in the place where he lodges at night; though he works and diets with his master in another parish — 455
 Settlement gained by apprenticeship, though 5l. was given with the apprentice, and the indentures not stamped, because the money was paid out of a voluntary charitable subscription for that purpose — 456
 Settlement not gained by apprenticeship where the indentures are not stamped — 461
 Settlement not gained by apprenticeship, unless a binding within the act appears — 462
 Settlement not gained by apprenticeship to a master who at the time of binding had not a certificate, but obtained one twenty-two days after the binding; otherwise, if the apprentice had served forty days, before the master had brought his certificate — 463

III. Of Settlement by Birth.

A bastard is settled where born, though called in the order the son of J. H. the father — 465
 A bastard is settled where born, though it be the child of a certificate-woman — 467
 A bastard is settled where born, though it be the child of a certificated-woman — 469

Children of a father having no settlement must have the settlement of the mother — 470
 Children by a former husband do not acquire the settlement of the second husband — 477
 Children are settled where the father is, after thirty years cohabitation with the mother; though their marriage was doubted — 478
 Children have no settlement in a place where the father purchased an estate for less than 30l. though the father himself be irremovable so long as he inhabits the purchased premises — 480
 Children of a certificate-man, who had gained a settlement by a purchase of 42l. value, having no settlement but what they derive from their father, are also settled there — 482
 A child thirteen years old removing with the mother as part of her family, after the father's death, and residing upon the lands of the mother, of 4l. per annum, gains a settlement under the mother, equally as it would under the father — 484

IV. Of Settlement by Certificate.

Settlement gained by certificate-man, by renting a wind-mill of 10l. per annum — 488, 494
 Settlement gained by certificate-man by making a purchase of 47l. value — 489
 Children of a certificate-man cannot gain a settlement but by renting 10l. a year or executing an annual office in the parish — 494
 Child of a certificate-man cannot gain a settlement by hiring and service in the parish to which the father was certificated — 497
 Child of a certificate-man may gain a settlement by hiring and service for a year, if such child hath served an apprenticeship in a third parish, and after that returned to the parish the father came into by certificate — 498
 Settlement not gained by a certificate-man, who hired a tenement of 10l. a year, because the sessions adjudged it fraudulent; and the circumstances warrant their conclusion — ib. 502
 Settlement not gained by a certificate-man, who received 10l. a year for officiating as school-master — 503
 Settlement not gained by certificate-man, tho' legally placed in an annual office, if he does not execute it a whole year — 504, 507

V. Of Settlement by Estate.

Residence upon one's own estate gains a settlement — 507
 Settlement gained by estate of the value of 30l. bona fide paid, with forty days residence, though the premises should be immediately mortgaged — 511, 515
 Settlement gained by estate, with forty days residence, though such residence be not successive, nor upon the estate, but only lodging in the

I N D E X.

The parish ————— 515
 Settlement gained by estate of less than 30l. value, when the owner comes to it by gift or devise, &c. ————— 518, 521
 A woman purchased a leasehold tenement for 6l. and afterwards married; upon her marriage, it vested in her husband; and by forty days residence, he gained a settlement: the husband died first: his settlement communicated itself to the wife ————— 521
 Where the wife resides forty days upon the husband's own estate, without her husband, she is not removable when likely to become chargeable ————— 522
 Settlement not gained by estate of 14l. a year by descent; because the interest in it determined before forty days residence ————— 524
 Settlement not gained by estate where the purchase-money was only 19l. though 15l. more was laid out, to put it in repair; and though the owner was taxed after the rate of a tenement of 30l. value ————— 527

VI. Of Settlement by Hiring and Service.

Settlement gained by a general hiring, without expressing the particular time ————— 530
 Settlement gained by conditional hiring with a year's service ————— 532
 Settlement gained by hiring of a married man, and service for a year; but the agreement was not completed till after his wife's death ————— 534
 Settlement gained by hiring a service, though the servant was absent, without the master's leave, for three weeks in the middle of the year, but the master received him again — 536
 Settlement gained by hiring for a year, and service till within three weeks of the end of the year; then going away for about six weeks, with leave and returning to his master's service ————— 537
 Settlement gained by hiring for a year, and service till within five weeks of the end of the year; and then absent with leave ————— 538
 Settlement gained by hiring for a year, and service till within seventeen days of the end of the year; and then leaving it, being visited with illness, and never returning: the relation of master and servant continued, and it is not put an end to by this visitation of God ————— 540
 Settlement gained by hiring for three quarters of a year, and serving it; then leaving the service for one hour; returning and hiring for a whole year: but serving only half a year — This was no discontinuance ————— 543
 Settlement gained by hiring and service for less than a year; then a second hiring to the same master for a year, but not serving out the whole year; but being coupled to the former

hiring, the total service amounted to above a year ————— 545
 Settlement gained by hiring for a year, and service for a year; though paid only in proportion to the work done, viz. so much per stone for spinning yarn; but lodged and boarded with the master ————— 549
 Settlement gained by hiring for a year and service for a year, though the master and servant were at liberty to determine the contract at the end of any quarter; but did not do it — 550
 Settlement by hiring for a year and a service for a year; though the wages were received as wanted, and the servant absent at divers times with leave ————— 551
 Settlement gained by hiring and service for a year, and forty days residence at different times but not together ————— 553
 Settlement gained by hiring and service for a year by an apprentice, after the death of his master ————— ib.
 Settlement gained by hiring and service for three quarters of a year; when the master complained of the servant's marrying within the year, and the justice allowed a discharge against the master's consent ————— 554
 Settlement gained by hiring and service for a year by an apprentice, though the term for which he was bound apprentice was not expired: but the indentures were cancelled — 557
 Settlement gained by hiring for eleven months, and to give in a month's service—It is a hiring and service for a year ————— 559
 Settlement gained by hiring for three years, under certain conditions; and service for one year and a quarter; though at the end of six months, the servant was absent for the space of three months, being ill; but when he returned, the master received him — 560
 Settlement not gained by hiring for a year, where the time upon liking previous to the history is included—A hiring for a year can have no retrospect ————— 562
 Settlement not gained by hiring at statutes from the 14th of November till Martinmas following (the 11th;) because it was not a hiring and service for a year ————— 563
 Settlement not gained by hiring for a year, and service for eleven months—he had for some time before been a weekly labourer—The former weekly service cannot be coupled with the hiring for a year; because not of the same kind or nature ————— 566
 Settlement not gained by hiring for a year with liberty to be absent during the harvest-month ————— 567
 Settlement not gained by hiring and service for two years in two different places—The master of a parish apprentice, in consideration of 40s. agreed to discharge him: but the apprentice

prentice was not of age to consent to the discharge	568
Settlement not gained by hiring and service for two years, in two different places; the service was only to be eleven hours the six working days: the rest of the time the servant was his own master	570
Settlement not gained by hiring for a year, and service till within three weeks of the end of the year, and then with his own consent discharged; though the servant returned a fortnight after, and was hired for a year and served six months	572
Settlement not gained by hiring and service for a year, by a man who is married at the time of being hired	575

VI. *Of Settlement by Marriage.*

A woman, without consent of parent or guardian, married a minor, since the marriage; no settlement is gained by such marriage	576
A certificate-man married a second wife during the life of his first: the parish who gave this certificate acknowledging the second wife, are not only obliged to maintain the first, but also the second wife and their children by him	577

VII. *Of Settlement by Office.*

Settlement not gained by executing the office of constable; because he was not presented at the court leet; as the custom had been	580
------------------------------------------------------------------------------------------------------------------------------------	-----

VIII. *Of Settlement by renting 10l. a Year.*

Settlement gained by renting a tenement of 10l. per annum, the ability to stock the farm is not material	581
Settlement gained by renting a tenement of 10l. a year; and residing above forty days in a part of it worth 40s. a year only; and letting the rest to under-tenants—He needs not occupy the whole	582
Settlement gained by renting the moiety of a tenement, as tenant at will, where the moiety exceeds 10l. a year	584
Settlement gained by renting different tenements in different parishes amounting to 10l. a year; the settlement is in the parish where the man resides above forty days	586
Settlement gained by different tenements in different parishes, amounting to 10l. a year; the settlement is in the parish where the man resides above forty days	587
Settlement gained by renting land from Candlemas to Michaelmas, and paying 11l. for it, with forty days residence—It needs not be a taking for a whole year	590
Settlement not gained by renting a tenement of 6l. 10s. per annum, with a covenant to make it worth 10l. a year; but that covenant was not performed	592

Settlement not gained by renting a tenement of 16l. per annum jointly between two persons, though it had been let at 20l. a year; since the half does not amount to 10l. a year	595
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----

Settlement not gained by renting a messuage, &c. and feeding for sixteen cows in a dairy; though he was to pay above 10l. a year—This was no tenement: a tenement must lie in tenure, and relate to land	597
Settlement not gained by renting a tenement of 8l. per annum, and being a joint-tenant for 3l. 15s. more, and to pay the joint-tenant 4s. more for some privileges—This 4s. cannot be considered as a rent—Then 8l. added to the half of 3l. 15s. is not equal to 10l.—600	

XI. *Of Settlement by Taxes.*

Settlement gained by a tide-waiter who was rated and paid the land-tax, though he was repaid by the collector	601
Settlement gained by tenant paying the land-taxes, though repaid by the landlord	602
Settlement gained by being charged and paying to a poor's rate	603
Settlement gained by being rated by name, and paying a quarter's church and poor-levy; tho' repaid by the landlord	604
Settlement gained by being charged and paying to the land-tax; though it be not for a whole year	605
Settlement gained by being charged to, and paying the land-tax in a tenement of less than 20l. value	606
Settlement gained by being charged to and paying the land-tax and poors-rate; though the purchase money was only 12l.	607
Settlement gained by being rated thus—"T. C. or tenant"—The tenant paid the taxes and gained a settlement thereby	609
Settlement not gained by paying taxes, unless the person is rated	610

X. *Order of Removal.*

Order confirmed at sessions binds the parish charged against all the world	611
Order discharged at sessions binds the contending parties	613
Order confirmed at sessions, without appeal, is conclusive upon the parish to which the pauper is removed	615
Order discharged at sessions binds the contending parishes, but does not bind a third parish	617
Order quashed for want of justices shewing they have jurisdiction	618
Order quashed for having amended matters of substance	619
Order quashed for want of an adjudication	621
In every order there must be either an express adjudication or plain reference	622

I N D E X.

An order of removal to a parish, confirmed without appeal by such parish, concludes that parish against all the world — 625
 Order bad where children removed with the mother to her husband's settlement, and said to be her not his children — 626
 Order bad where the sessions do not determine whether a marriage be by a clergyman or not — 627
 Order of sessions affirmed when the facts are not sufficiently stated — 619
 Where the expression of the sessions is not absolutely clear and explicit, they shall be intended to have done right — 630
 Sessions are not obliged to state a case specially — 631
 A bill of exceptions will not lie upon a summary proceeding before justices — 634
 The sessions must state the fact itself, not evidence of the fact — 640
 In orders made at an adjourned sessions it must appear when the original sessions were holden — 641
 Sessions if once dropt and not adjourned cannot be resumed — 642
 Sessions cannot take up an appeal if not continued by adjournment; notwithstanding a conditional reference to the next judge of assize — 643
 The quarter-sessions of a borough have no jurisdiction in an appeal from an order of removal—The appeal must be to the quarter-sessions of the county — 644

XI. R A T E.

Neither the quit-rents, nor the heriots, or other casual profits of a manor, are rateable to the poor-tax — 646
 A rate cannot be made to reimburse an overseer: but he may reimburse himself, whilst in office, out of the next money raised—Poor rates should (as it seems) either be made monthly, or at least divided and distributed into so much per month — 647
 Hospitals are rateable, or not, to the poor-tax, according to circumstances — 652, 661

Popery.

Stat. 25 Ed. 3, ft. 6. The causes why the kings and noblemen of the realm did give lands to bishops and other prelates — 661
 The pope bestowed spiritual livings upon aliens not dwelling in England—The inconveniencies ensuing thereon—The pope giveth the benefices of the church, and reserveth the first fruits to himself — 662
 The causes and reasons of making this statute—Elections of the dignities of the church shall be free as they were founded—Patrons and founders of the dignities of the church, Vol. III. No. CXI.

and their heirs, shall have the collation or presentation to them being void—Where the pope maketh provision to a dignity of the church the king shall present — 663
 The penalties of those which by provisions from Rome do disturb such presentments or elections as others ought to make — 664
 Stat. 27 Ed. 3, ft. 1, c. 1. Præmunire for suing in a foreign realm, or impeaching of judgment given — 667
 Appearance of the offender after two months will save his outlawry, but not his lands or goods — 668
 Stat. 3 Ric. 2, c. 3. The causes why advowsons of benefices were given to spiritual persons—The inconveniencies which have ensued by giving of benefices to aliens — ib.
 None shall take in ferm any benefices of the church of an alien without the king's licence—None shall convey money out of the realm for such ferm—Process awarded against offenders that are out of the realm—None shall meddle by sequestration, nor in other manner, with a benefice given to an alien 667
 Stat. 7 Ric. 2, c. 12. A confirmation of the statute of 3 R. 2, c. 3 — 668
 Stat. 13 Ric. 2, c. 2. For all benefices which shall be void after the 29th of January, An. 13 R. 2, stat. 2, c. 2, the statute of 25 Ed. 3, stat. 6, of provisors, shall be put in execution—If any do accept of a benefice contrary to the said statute of 25 Ed. 3, stat. 6, he shall be banished the realm—The punishment of the receivers, procurators, &c. of offenders—Beneficed persons, to whom the pope had before given dignities of the church excepted—The penalty for suing to the court of Rome to infringe the purport of this statute — 669
 Stat. 16 Ric. 2, c. 5. The remedy to recover presentments to benefices in the king's court, and the execution thereof, is done by the bishop—The pope awarded processes and sentences of excommunication against certain bishops for executing judgments given in the king's court—The pope's translation of prelates out of the realm, or from one spiritual living to another—The freedom of the crown of England, and that it is in subjection to no realm — 670
 The promise of the commons to assist the king in defence of the liberties of his crown—The like promise of the lords temporal—The promise of the lords spiritual touching the commons petition — ib.
 The promise of the procurators of the lords spiritual being absent—Præmunire for purchasing of bulls or other instruments from Rome, or elsewhere — 672
 Stat. 7 Hen. 4, c. 8. No provision, licence, or pardon

- pardon shall be granted of a benefice full of an incumbent ————— ib.
- Stat. 3 Hen. 5, c. 4. All provisions, licences and pardons of a benefice full of an incumbent shall be void ————— 672
- Stat. 3 & 4 Ed. 6, c. 10. Certain books and images shall be abolished ————— 673
- Images taken out of, or yet remaining in churches, shall be destroyed—Popish books shall be first delivered to the mayor, &c. and then by him to the bishop, &c. to be burnt or otherwise defaced—The penalty of mayor, &c. or bishop, &c. omitting their duty herein —Justices of assize and peace shall hear and determine these offences ————— 674
- Images upon tombs shall still remain—Primers set out by H. 8, being purged, may be still retained ————— 675
- Stat. 5 El. c. 1. The penalty for maintaining the authority of the bishop or see of Rome—What justices may enquire of, and certify the offences aforesaid—The penalty for default of certificate of the said offences—The justices of the king's-bench may hear and determine the offences aforesaid ————— 676
- These shall take the oath set forth anno 1 Eliz. c. 1.—Takers of ecclesiastical orders—Degrees in universities—School-masters—Utter-barresters—Benchers—Readers—Ancients—Protonotaries—Attornies—Philizers—Sheriffs—Escheators—Feodaries—Officers at the common law—Officer at any court—The bishop may tender the oath to any spiritual person 677
- The lord-chancellor may direct a commission to take the oath of any person—The penalty for the first refusal of the oath—Certificate of refusal into the king's-bench—Indictment of offender ————— 678
- It shall be treason the second time to maintain the authority of the bishop or see of Rome, or to refuse the oath—No corruption of blood, or forfeiture of dower for any attainer by this act—How the oath expressed Ann. 1. El. 1, shall be expounded—In what courts and places this act shall be published ————— 679
- Every knight, citizen and burghers of the parliament, shall take the said oath before the lord steward or his deputy—None of or above the degree of a baron shall be compelled to take the said oath—Charitable giving of alms to offenders, shall be no cause of forfeiture—Peers offending shall be tried by their peers—Who only shall be compelled to take the oath upon the second tender ————— 680
- It is not lawful to slay one attainted in a præmunire—Punishments inflicted by former laws—Upon what proof only any person may be indicted ————— 681
- Stat. 13 Eliz. c. 2. Rehearsal of the statute of 5 El. c. 1, touching the abolishing of the authority of the bishop and see of Rome—The effect of bulls brought from Rome 681
- Putting in ure any bull of absolution or reconciliation from the bishop of Rome—Absolving or reconciling of any person, and being absolved or reconciled—Getting of any bull from Rome, containing any matter whatsoever, or publishing or putting in ure the same—Aiders, comforters, and maintainers of offenders after the offence—Concealing, or not disclosing a bull, or reconciliation offered ————— 683
- Bringing into the realm, or using of Agnus Dei, pictures, crosses, &c.—Apprehending an offender, or disclosing his name — 684
- Delivering an Agnus Dei received, to the ordinary, or a justice of peace—A pardon to them that shall bring in to be cancelled those bulls which before they received—A pardon of all those that have been reconciled to the bishop of Rome, and do confess it, and submit themselves ————— 685
- The penalty of a justice of peace, not disclosing an offence declared unto him—Trial of a nobleman by his peers—A saving of the right of others ————— 686
- Stat. 23 Eliz. c. 1. Treason to withdraw any from the religion established, to the Romish religion ————— ib.
- It shall be treason to be reconciled or withdrawn to the Romish religion—The penalty of aiders, maintainers, and concealers—The forfeiture for saying or hearing of mass—The penalty for not coming to the church by the space of a month, according to the stat. 1 El. c. 2.—The king may seize two parts of the offenders lands, &c. in lieu of the twenty pounds ————— 687
- The forfeiture for keeping of a school-master not repairing to the church, or not allowed by the ordinary—What justices may enquire of offences done against the stat. of 1 Eliz. c. 1. 5 Eliz. c. 1. 13 Eliz. c. 2. 29 Eliz. c. 6.—A remedy for a guilty person conforming himself—Who shall have the money forfeited by this statute—He shall be imprisoned that is not able, or doth not pay the forfeiture ————— 688
- Service in a man's private house—Fraudulent assurances to defeat forfeitures—Trial of a peer by his peers—Ecclesiastical censures ib.
- Stat. 27 Eliz. c. 2. Jesuits and priests in England shall depart, and none shall come into this realm—The penalty for relieving of them, &c.—The causes why jesuits and priests do come into this realm—All jesuits and priests shall depart forth of the realm—No jesuit or priest shall come into, or remain in this realm—Receiving or relieving a jesuit or priest, shall be felony—They who be in seminaries

- feminaries shall after proclamation return and take the oath ————— 689, 690
- Sending relief to any jesuit, priest or other person abiding in a seminary—None shall send his child or other beyond the seas, without licence—Where the offences committed against this act shall be enquired of and determined ————— 691
- Transporting of jesuits, priests, &c.—A jesuit or priest submitting himself, and taking the oath, and obey the laws ————— 692
- One knowing a jesuit or priest to remain in the realm, and not discovering it to a justice of peace—All oaths, bonds and submissions certified into the chancery—None submitting himself, shall come within ten miles of the queen ————— 693
- Stat. 29 Eliz. c. 6. Certain assurances of lands made by recusants, shall be void to the queen —In what courts they shall be convicted—Conviction of recusancy shall be certified into the exchequer—In what courts convictions of recusancy shall be—At what time the money forfeited for not going to the church, shall be paid—The king may seize two parts of the offender's lands, &c. in lieu of the twenty pounds ————— 693, 695
- The queen may take all the offender's goods, and two parts of his lands and leases, who payeth not twenty pounds a month—The indictment sufficient, though it be not mentioned, that the party is within the realm—A proclamation, that the party indicted shall yield his body to the sheriff—The offender submitting, or dying, no forfeiture shall ensue—The third part of the forfeiture assigned to the poor—Assurances made bona fide, not impeached—Seizure of lands whereof the offender hath but an estate for life 695, 696
- Stat. 35 Eliz. c. 2. Penalty of a convicted popish recusant removing above five miles from his house—Where a recusant having no house shall make his abode—Recusants that shall be convicted hereafter, shall repair to their usual dwelling ————— 697
- The penalty of an offender—What a recusant shall do that hath no place of abode—The forfeiture of a recusant removing above five miles from his place of abode—A recusant, copyholder departing five miles from his place of abode—Recusants shall notify their living, and deliver their names to the curate ————— 698
- Recusants names certified to the justices—The penalty of a recusant of small ability, not repairing to the place appointed, or departing thence—Recusants abjuring and departing the realm ————— 699
- Entring asjuration of record, and certifying the same—It shall be felony for a recusant not to abjure, not going, or returning without licence—A jesuit or priest refusing to answer, shall be imprisoned ————— 700
- Persons urged by process or commandment—Persons which are to yield their bodies to the sheriff—An offender upon open submission shall be discharged—The form of the submission ————— 701
- The minister shall enter the submission—A recusant submitting, falleth into a relapse—Women bound, saving for abjuration—Statutes made in the reign of Q. Elizabeth, shall be put in execution—In what case a recusant's heir shall be charged, in what not—Going into seminaries—A recusant conforming himself, shall be discharged—A recusant's heir within age at the time of his ancestor's death—A third part of his living shall remain clear to a recusant — 702, 703
- The two parts of a recusant's lands, after his death, shall remain in the king's hands until he be satisfied of the arrearages—None shall go or send any other to a seminary, &c.—They who be in seminaries shall return 704
- A remedy for such as do return into the realm, and become conformable to the laws—No woman or child shall pass over the seas without licence—The forfeiture of those who do suffer them to pass—The forfeiture for being or keeping a school-master contrary to this act ————— 706
- Stat. 3 Jac. 1, c. 4. Some popishly affected do repair to the church—The forfeiture of a conformed recusant, which doth not receive the sacrament of the Lord's Supper yearly 760
- Presenting the monthly absence from church of a recusant—A recusant's children and servants—The presentments recorded—The reward of the church-wardens and constables—What officers shall enquire of offenders 707
- The effect of the proclamation—Conviction of a recusant—The penalty of a convicted recusant—Every conviction shall be certified into the exchequer ————— 708
- Stat. of 23 Eliz. c. 1, touching a recusant's monthly forfeiture—How by the statute of 29 El. c. 6, the queen should recover forfeitures due to her by recusants—The king may refuse 20l. a month, and take two parts of a recusant's lands—Saving of the right of others—A recusant's mansion-house shall be reserved to him—The king's two parts shall not be demised to a recusant—Who are compellable to take the oath — 709, 710
- Certificate of the name of him who taketh the oath—Refusal of the oath—The penalty of præmunire, 16 R. 2, c. 5, woman covert ————— 711
- No indictment of a recusant shall be reversed for default of form ————— 712
- 6 Z 2 He.

- He that conformeth himself, may traverse an indictment—He shall take the oath who goeth out of the realm to serve a foreign prince—A gentleman, captain, or lieutenant serving a foreign prince, shall be bound to the king, &c. 713
- Who shall take the obligation and administer the oath—Forfeiture for not registering and certifying—Putting in practice to absolve or withdraw any from obedience, or to reconcile them to the pope—Being withdrawn or reconciled—A reconciled person taking the oath 714
- Where the trial shall be—Peers—The forfeiture for not repairing to church weekly 715
- Within what time the offender shall be impeached—But once punished for one offence—Relieving or keeping a recusant in his house—Retaining a recusant in his service, fee, or livery—The father, mother, ward, &c. of person committed by authority 716
- Breaking a house to take a recusant excommunicate—In what courts the offences shall be heard and determined—Attainder of felony, no forfeiture of dower, or corruption of blood—The plea to action brought for doing any thing by force of this statute—The authority of the ecclesiastical court reserved—No forfeiture for the wife's offence 717
- Who may take the oath of a nobleman or woman—Who shall take the oath in the cinqueports 718
- Stat. 3 Jac. 1, c. 5. The reward of him who discovereth a priest or mass 719
- A recusant shall not come to the court—Recusants shall depart from London 719
- A recusant confined—A repeal of a proviso contained in the statute of 35 Eliz. c. 2, touching licence to recusants—Licence to a recusant confined—The effect of a licence to be granted by four justices of peace—A recusant disabled to practice certain offices and functions—No recusant shall be a public officer—A woman married recusant 721, 722
- A recusant shall be as excommunicated—What actions a recusant may prosecute—Recusants marriages by priests, &c. 723
- The baptism of recusants children—The forfeiture for burying recusants, not excommunicate, out of the church or church-yard—The forfeiture of children departing the realm 724
- The forfeiture of him who sendeth his child beyond the sea—The forfeiture of the persons gone beyond the sea 725
- A recusant shall not present to a benefice, nor grant an advowson—The chancellor and scholars of Oxford shall present to a recusant's benefice—The chancellor and scholars of Cambridge—None shall be presented who hath another benefice 726
- A recusant shall not be executor or administrator—A recusant shall be no guardian—Who shall have the wardship—The king's wards—Popish books 727
- Justices may search for books printed, &c.—A crucifix defaced—A recusant's armour—The forfeiture of a recusant not delivering his armour—A recusant shall maintain his armour 728
- Stat. 7 Jac. 1, c. 6. The penalty of a married woman recusant, that shall not come to the church and receive the sacrament 729
- Stat. 3 Car. 1, c. 2. A restraint of passage or sending any person beyond the seas to be popishly bred 729
- 1 Jac. 3, c. 4. He that goeth himself, or sends any other beyond the seas to be trained up in popery, &c. shall be disabled to sue, &c. and shall lose all his goods, and shall forfeit all his lands, &c. for life 730
- A convert shall not incur the penalties aforesaid 730
- Stat. 1 Will. & Ma. c. 9. Lord mayor, &c. may tender declaration of 30 Car. 2, to papists or so reputed—Penalty for refusal—Justices of peace shall certify subscribers and refusers into the king's bench, &c.—Penalty upon person certified to have refused, if he take not the oaths next term, &c.—Tradescmen, &c. excepted, if they certify their names, &c. at the sessions—Ambassadors servants excepted—Queen dowager's servants excepted 731
- Stat. 1 Will. & Ma. c. 15. Two justices of peace may tender declaration of 30 Car. 2, to papists, &c. 731
- Penalty upon refusers—Justices of peace shall certify the subscribers and refusers to the sessions—Refuser shall keep no arms—Two justices of peace may seize arms—Penalty upon refuser for not discovering or hindering the search for his arms 733
- Penalty upon concealers of arms—Reward to discoverer of refusers arms—Refusers subscribing the declaration, penalty discharged 734
- Papists horses above 5l. value forfeited—Penalty upon concealers of papists horses 735
- Stat. 1 Will. & Ma. c. 26. Persons refusing declaration disabled to present, &c. 735
- Universities shall present, &c.—Trustees disabled—Penalty upon trustees presenting without notice 736
- Presentation of person beneficed, void—What absence makes living void—Taking the oaths purges the disability 737
- Stat. 11 & 12 Will. 3, c. 4. 100l. Reward for taking popish bishop, priest, or jesuit, &c. convicted of saying mass, &c. to be paid by the sheriff, &c.—In case of dispute about sharing

I N D E X.

sharing the reward, judge to proportion the same—Penalty on sheriff making default of payment—Sheriffs to be repaid by the treasury—Penalty on popish bishop, priest, &c. 738

Saying mass, &c. or keeping school, &c.—Papists not taking the oaths in six months after eighteen years of age, incapable to inherit any lands, &c.—Next of kin being a protestant, to enjoy the same, and not accountable, &c. except for wilful waste—Papist, &c. incapable to purchase lands, &c. — 739

An act not to extend to popish priest saying mass, &c. in foreign minister's house, so as he be not king's natural born subject, &c. — Person convicted of sending child, &c. beyond sea, to be educated in the Romish religion, to forfeit 100l.—Popish parent refusing to allow his protestant child, &c. fitting maintenance, on complaint thereof, lord chancellor, &c. to make order therein — 740

Stat. 12 Ann. c. 14. Papists, &c. disabled to present to any benefice, &c.—And the two universities shall have the presentation, &c. in the respective counties, &c. mentioned in 3 Jac. 1, c. 5. — 741

When any presentation is brought to any archbishop, &c. he may tender to the person if present the declaration in 25 Car. 2, c. 2.—If absent, summon him to appear—Refusing to make the declaration, or to appear, the presentation shall be void—And the archbishop, &c. shall certify such refusal to the university, who shall present, &c.—Bishops, &c. to examine persons presented on oath 742

Refusing to be examined, the presentation shall be void—University may exhibit bills in chancery for the discovery of fraudulent trusts—When any quare impedit is depending the the court may administer an oath to discover any secret trust — 743

And if it appear that the patron is a trustee, he shall discover for whom, or be punished as guilty of a contempt—Court may order the person for whom such patron is a trustee to appear and make the declaration, &c. who refusing shall be esteemed a recusant convict—The answer of such patron, &c. to be allowed as evidence—Persons making such discovery, liable only to the loss of the presentation—If such a bill be exhibited by the university, no lapse shall incur, &c. till three months after the answer put in, &c. — 744

The university may sue any writ of quare impedit—The court may enforce the producing of deeds relating to trusts—Not to extend to Scotland—The lords of justiciary may inflict the same punishments on jesuits, &c. which the privy council of Scotland was empowered to do by an act passed in that kingdom — 745

Stat. 1 Geo. 1, ft. 2, c. 35. Papists in England, &c. to take the oaths appointed by 1 Geo. 1. stat. 2, c. 13, and repeat and subscribe the declaration in 30 Car. 2, stat. 2, c. 1.—Or in default shall within six months after they come into possession of any lands, &c. register their name and land, &c. in books to be kept by the clerk of the peace—Manner of registering—Estates let upon lease—Persons names to be subscribed in the presence of two justices — 747

Two justices to subscribe their names, on penalty of 20l.—Clerks of the peace to keep parchment books to enter the names, and register the estates, &c.—Fees to be paid—Books to be carried to the quarter-sessions—Clerks of the peace to keep alphabetical tables of the surnames, and file the warrants of attorney — 748

Clerk of the peace shall give copies of register, and refusing shall forfeit his office—Penalty of persons not taking the oaths, or not registering their estates, &c.—Forfeitures how to be recovered and disposed — 749

Purchasers, &c. for a valuable consideration, not knowing of any default or fraud in registering, shall not be prejudiced, &c. by reason of any forfeitures—Not to extend to persons not actually seized, &c. for the space of six months—Nor to compel any farmers, &c. to register—Nor to prejudice any creditor: but persons making default, &c. in registering incumbrances, shall forfeit the value—Times allowed to persons in the Indies or America — 751

Stat. 3 Geo. 1, c. 18. No suit for frauds in registering shall be commenced after two years—Where manors, &c. lie in more counties than one, they shall be registered in the county only where the manor-house stands—No sale for a consideration of any manors, &c. by the reputed owner, &c. made or to be made to any protestant, shall be avoided on pretence of the disabilities in the recited acts—Unless such manors, &c. were recovered before the sale, or notice of the claim given to the purchaser, or the claim entered at the quarter-sessions—The clause in 11 & 12 W. 3, c. 4. whereby papists are disabled from purchasing any manors, &c. shall not be hereby altered or repealed — 753, 754

Stat. 11 Geo. 2, c. 17. The reputed owners, or persons in possession of the profits of any estate, being papists, on conforming to the protestant religion, and taking the oaths, &c. and subscribing the declarations expressed in the act 30 Car. 2, (to be recorded in one of the courts of record at Westminster, or quarter-sessions of the county) and all protestants claiming under them for the benefit of protestants

- stants only, to possess such estate, freed of the disabilities incurred by such owners, &c. unless the persons intitled to take advantage of such disability have recovered, or shall recover, such estate by judgment in some action already commenced, or to be commenced within six kalendar months before the making such record — 755
- Not to prejudice the right of any person, who shall have been in possession two kalendar months precedent to such record—Persons returning to the popish religion, not to have any benefit by this act—This act not to prejudice the right of any person intitled to any reversion, if pursued within twelve kalendar months; &c.—Recites the acts 12 Ann. stat. 2, c. 14, and 1 W. & M. stat. 1, c. 26. — 755, 756
- Every grant made after 6 May, 1738, of any ecclesiastical living, &c. by any papist, &c. void, unless made for a valuable consideration to a protestant purchaser, &c.—Every devise made of any ecclesiastical living after 6 May, 1738, by a papist, void — 757
- ### Post-Office.
- Stat. 9 Ann. c. 10. Former acts in England and Scotland relating to the post-office repealed — 758
- One general post-office to be erected, and one post-master general—Exceptions — 759
- Carriers, coachmen, watermen, &c. not to carry letters—A chief letter-office to be erected, at Edinburgh, at Dublin, and at New-York, &c. — 760
- The post-master general, and no other, to provide horses for riding post—Rates for carrying letters in England — 761
- Rates for letters on board any ship—Penny-post—Rates for foreign letters — 763
- Places where posts are not yet settled, to pay according to these rates—Foreign letters collected, &c. between London and the port whence the packet-boat sails, to pay as to or from London — 764
- Packet-boats to go from Donachadee to Port-Patrick—Post master to erect cross stages, &c.—A survey to be taken of the distances of the roads — 765
- Surveyor to be sworn—Proviso for merchants, by 6 Geo. 1, c. 21, sect. 52.—This proviso is restrained unto merchants accounts, &c. sent beyond sea, &c.—Rates for riding post — 766
- At port-towns deputy post-master to receive all letters from on board ships, &c.—And to give the bringer, &c. a penny a letter, &c.—None to carry letters, &c. but the post-master general, or his deputies — 767
- Deputy post-master to account for by way-letters — 768
- Penalties how to be recovered—Proviso when the post-master doth not furnish horses in one half hour—Penalty on post-master not providing—Letters may be sent from any place, to the next stage above six miles from the general post-office—None may collect letters in London, &c. without licence, &c. — 769
- The packet not to be carried out of Great Britain in foreign ships—Post-master, &c. how to qualify himself — 770
- Proviso for Turrow, Penrin, Kendal, Penrith, &c.—The post-master, to observe such orders as her majesty shall make—No horses to be seized without the owners consent—Post to pay nothing for passing ferries in North America — 771
- Debts for postage to be recovered as small tithes are—Inland letters to pay where delivered—Proviso for the two universities—By-bags for by-letters — 772
- No letters to be opened, detained, or delayed—Exceptions—Post-master, &c. to be sworn — 775
- Stat. 6 Geo. 1, c. 21. Bills of exchange wrote on the same piece of paper with a letter, to be rated as so many distinct letters — 777
- Merchants accounts, bills of exchange, invoices, &c. wrote on one sheet of paper, to extend only to such letters sent to foreign parts — 778
- Penny post-men carrying letters out of London, Westminster, or Southwark, may demand 1d. at delivery — 779
- The act not to prohibit the furnishing chaises, &c. upon the road—Persons letting chaises may furnish horses for persons attending — 780
- Stat. 26 Geo. 2, c. 13. Every writ, &c. to pay as a distinct letter — 781
- Letters inclosing several patterns not exceeding one ounce weight, to pay only as a double letter — 781
- Stat. 4 Geo. 3, c. 24. While the revenue of the post-office shall continue to be carried to the aggregate fund; no letters or packets shall be exempted from postage, but such as shall be sent from or to the king, and such, not exceeding two ounces in weight, as shall be sent during the session of parliament, or within forty days after summons or prorogation, and be signed on the outside by a member of either house, and the whole of the superscription to be of such member's writing; or, directed to a member, at his usual residence, or place where he shall then be, or at the house, &c. of parliament: and in like manner, letters and packets sent from and to places in Ireland, during the session there, or within forty days before or after summons or prorogation,

- prorogation, signed and directed as aforesaid 781
- Commissioners of the treasury and admiralty, the secretaries of state, commissioners for trade and plantations, secretary at war, post-master general, and his deputies, impowered to authorize certain persons in their respective offices, of whom lists to be transmitted to the general post-office, London, to indorse the letters and packets upon the king's service, and seal the same with the seal of office, &c.—None to be so indorsed and sealed, but by direction of their superior officer, or which concerns the business of the office, on forfeiture of 5 l. for the first offence, to be recovered and applied as by act 9 Ann. is directed, and for the second offence, the offender to be dismissed 783
- Persons appointed to make such indorsements, not to exceed two in any office, admiralty and war-offices excepted; and in the admiralty not to exceed eight in time of peace, and twelve in time of war; and in the war-office, not to exceed six in time of peace, and ten in time of war—Where any privileged person, disabled from writing the whole superscription, shall authorize some person to sign his name upon, and write the superscription, and give notice thereof under his hand and seal to the post master general, letters and packets so signed and superscribed shall go free—Printed votes and proceedings in parliament, and news papers sent without covers, or in covers open at the sides, and signed on the outside by a member, according to notice given by him to the post-master general, or his deputy at Edinburgh or Dublin, are to go free 784
- Clerks in the offices of the secretaries of state and post-office, being duly licensed, may continue to frank the votes, and proceedings in parliament, and news papers, as heretofore, sending the same without covers, or in covers open at the sides — ib.
- Post-master general, and officers under him, may search any packet sent without a cover, or in a cover open at the sides; and if they shall find any other paper or thing inclosed therein, or there shall be any writing, other than the superscription upon the printed paper, or cover, the whole of such packet is to be charged with the postage—If any person shall, after 1 June, 1754, counterfeit the writing of any person in the superscription of any letter or packet, to avoid the postage, he shall be judged guilty of felony, and be transported for seven years 785
- Rates of postage from London to any port within the British dominions in America, and from any such port to London; and from any port in the said dominions to any other port therein, by sea — 786
- Rates of inland postage in America for any distance not exceeding sixty miles; for upwards of sixty and not exceeding one hundred miles; for upwards of one hundred and not exceeding two hundred miles; and for upwards of two hundred and not exceeding one hundred miles further, &c. — 787
- No vessel to be admitted to make entry, or break bulk, till the letters on board are delivered to the post-office; except in such cases where they are to be delivered to the superintendent of the quarantine; to be dispatched by him to the post-office—Persons refusing to deliver up such letters, forfeit 20 l.—One moiety to the king, the other to the prosecutor with full costs—id. extra charged on all ship letters not brought by the packet boats 788
- The present rates of postage by the general post, not exceeding one postage in Great Britain and Ireland, and not exceeding two in England, are to cease, and the following rates are to take place; viz. rates for postage not exceeding one postage; above one and not exceeding two post stages—But these regulations are not to extend to the penny post—Rates of postage between England and Ireland, through Carlisle, Dumfries, Port Patrick, and Donaghadee, or other convenient ports — 788, 789
- To prevent disputes, post roads may be measured; and a return to be made thereof upon oath; and entered in the three chief post offices in Great Britain and Ireland; and the chief offices in America—Fair surveys to be made out, and deposited in the respective offices here mentioned, signed by the persons making the same, and attested upon oath, and certified by the post-master general or his deputies—On suspicion of error, new surveys may be made out, according to which postage is to be charged 790
- Power given to settle penny-post offices where convenient—Where such offices are established, no person may collect the letters without being duly licensed—Letters, &c. brought by the inland or foreign post to the London office and directed beyond the department of the general post, but within the delivery of the penny-post, may be sent by the penny-post, and charged accordingly 791
- No packet exceeding four ounces (except those sent by the general post, &c.) may be sent by the penny post—The same rates of postage are to take place between London and Hamburg as between London and Germany 792
- The postage of letters to be sent out of Great Britain, may, if deemed necessary, be demanded upon their being put into the office —Penalty

I N D E X.

—Penalty of any officer of the post-office secreting or embezzling any letter with any bank bill or note, &c. therein, or taking out any such note or bill, is felony—Penalty of robbing mails, is felony — 792, 793
 Penalty of any officer, &c. imbezzling or misapplying the postage money received by him, or destroying any letter or packet, or advancing the rates, and not accounting for the same, is felony—Post boy quitting or deserting the mail, or suffering any person (except the guard) to ride on the horse or carriage, or loitering on the road, &c. to be committed to hard labour; and unlawfully collecting, conveying, or delivering letters or packets, he forfeits 10s. for every letter, &c. and if not paid forthwith, he is to be committed to hard labour—Clauses, &c. in the act of 9 Annæ, or in any other act touching the general or penny post-office, not hereby altered, or repealed, extended to this act — Rates, and pecuniary penalties, to be deemed sterling money — 794
 Monies arising by this act, to be applied as the present rates of postage—All necessary charges, &c. in the receipt and management of rates, to be allowed as usual—Paymaster general—Clerk of the parliaments, and clerk of the house of commons, impowered to send and receive letters free of postage—795
 Pound breach. See *Distress*.
 Powder for the hair. See *Excise*.

Praemunire.

Definition of, and cases where incurred 796, 797

Presentment.

Definition of ———— 797

Principal and Accessary.

Definition of, &c. ———— 798

Prison-Breaking.

Stat. 1 Ed. 2, ft. 2. In what case it is felony to break prison, in what not ———— 799

Privilege place. See *Rescue*.

Process.

Definition of ———— 800
 Stat. 8 Hen. 6, c. 10. The inconveniencies of indicting or appealing any person in one county that is conversant in another—Processes upon indictments of persons dwelling in foreign counties ———— 800

An action upon the case maintainable by the party indicted or appealed against the procurer of the same—A man indicted or appealed in the county where he is conversant shall be prosecuted as formerly ———— 801

Profaneness. See *Blasphemy*.

Prophecies.

Stat. 5 Eliz. c. 15. Penalty for publishing any false and fantastical prophecy upon arms, fields, badges, &c.—The penalty for publishing of any fantastical prophecy upon a mis, &c. to make insurrection, &c.—The penalty for the second offence ———— 802

What justices may hear and determine the offences aforesaid—Within what time an offender must be accused ———— 803

Protestant dissenters. See *Dissenters*.

Public-Worship.

Stat. 1 Ed. 6, c. 1. The penalty for unreverend speaking against the sacrament of the body and blood of Christ, or against the receiving thereof in both kinds —The king mindeth to have unity in religion by clemency — 803
 The blessed sacrament instituted by Christ himself, and by what words of his—The causes of the abuse of the blessed sacrament—The penalty for speaking most unreverently of the most blessed sacrament ———— 804

Justices of peace may enquire of offenders—Examination of the accusers —What process shall be awarded against the persons indicted—Justices of peace may determine the offences—Bailment of persons indicted — 805

A writ directed by the justices to the bishop—No indictment but within three months after the offence—The defendant may try his innocency by witnesses—The blessed sacrament shall be delivered unto the people under both kinds of bread and wine ———— 806

Purveyors.

Purveyances and provisions for the king's household, taken away—Purveyances for the king, queen, &c.—Timber, carts, carriages, &c. taken away ———— 808

No pre-emption to be allowed or claimed in behalf of the king, &c.—No action upon this statute to be stayed, but by order of the court where such action depends ———— 809

Quakers. See *Oaths, Tithes*.

Quarentine. See *Plague*.

Rape.

What it is ———— 810
 Stat.

Stat. 3 Ed. 1, c. 13. The punishment of him
that doth ravish a woman ————— ib.
Stat. 13 Ed 1, c. 34. It is felony to ravish a
woman ————— ib.
Stat. 6 Ric. 2, c. 6. The penalties of the man
and woman, where a woman ravished doth
consent ————— 811

Recognisance.

Stat. 4 Geo. 3, c. 10. The barons of the ex-
chequer impowered to discharge, upon af-
fidavit and petition, and without quietus fu-
ed, recognizances of persons eltreated into the
exchequer, &c. ————— 812

Recusants. See *Popery, Public Worship.*

Regrating. See *Forestalling.*

Release. See *Surety.*

Rent. See *Dishrefs.*

Rescue.

What is a rescue, &c. ————— 813

Restitution of Stolen Goods.

Stat. 21 Hen. 8, c. 11. There shall be restitu-
tion to the owner of stolen goods after the
attainder of the felon ————— 814

Riot, Rout, and unlawful As- sembly.

What they are, &c. ————— 816
Stat. 13 Hen 4, c. 7. Certificate of a riot, and
the punishment of offenders ————— 818

A traverse of a riot triable in the king's-bench—
Conviction of offenders for default of appear-
ance—The penalty of the next justices omit-
ting their office ————— 819

Stat. 2 Hen. 5, ft. 1, c. 8. A rehearsal of the
statute of 13 H. 4, c. 7, provided against those
that commit any riot, rout, or unlawful as-
sembly ————— ib.

Commissions shall be awarded to inquire of the
riot, and of the justices and sheriff's defaults
—Upon the commission the coroners shall
return the inquest, and of what sufficiency
the jurors shall be—What issues the coroners
shall return upon the jurors and upon what
penalty—Where the sheriff and not the co-
roners shall return the jury ————— 820

A writ directed out of the chancery to inquire
of riots—A riot shall be repressed and in-
quired of at the king's charges—The pu-
nishment of rioters—Each able person shall
be assistant to the justices and sheriff to re-
press riots—Bailiffs of franchises—Riots
committed in cities, boroughs, and towns
corporate ————— 821

VOL. III. No. CXI.

Stat. 2 Hen. 5, c. 9. The party accused is
taken by the sheriff, or yieldeth himself —
The sheriff returneth, that the party cannot
be taken—The suggestions of such riots
shall be testified under the seals of two justices
of peace and the sheriff—Riots committed
in a county where there is a chancellor and
a seal ————— 822

Stat. 8 Hen. 8, c. 14. Process awarded against
the offenders ————— 823

Stat. 19 Hen 7, c. 13. Jurors impannelled to
inquire of riots, and the issues returned there-
upon—The punishment of maintainers,
whereby a riot is found—How many jurors
shall be returned to inquire of a riot, and of
what sufficiency they shall be—What is-
sues shall be returned upon the jurors—The
sheriff's forfeiture for omitting his duty — 825

Stat. 1 Geo. 1, ft. 2, c. 5. Twelve persons, or
more, unlawfully assembled, after the last of
July, 1715, and not dispersing after com-
manded by one justice, &c. by proclamation,
shall be adjudged felons without benefit of
clergy—How the proclamation shall be
made—The proclamation—Justices, &c. to
resort to the place—Persons so assembled and
not dispersing within an hour, to be seized
————— 826

And if they make resistance, the persons killing
them, &c. to be indemnified—Pulling down,
&c. any church, &c. felony without benefit
of clergy—Opposing, &c. the making such
proclamation, felony without benefit of
clergy—And persons so assembled, if the
proclamation be hindered shall nevertheless
suffer as felons ————— 828

How the damages shall be made good, if any
church, &c. be demolished, &c.—This act
to be read at the quarter-sessions, &c. — 825

Prosecution within twelve months—Sheriffs,
&c. in Scotland to have the same power as
justices, &c. have in England—Punishment
of persons offending in Scotland—Damages
of any church, &c. pulled down, &c. in Scot-
land, how to be recovered, and of whom—
To what places in Scotland this act shall ex-
tend ————— 830

Rivers and Navigation.

Stat. 8 Geo. 2, c. 2. A month's imprisonment
on malicious drawing up flood-gates, &c.
Offences may be tried in any adjacent county
—Attainder on this act not to work cor-
ruption of blood, &c.—Person discovering
and convicting others guilty of the said felo-
nies shall be pardoned—The hundred to
answer the damages ————— 831

How to be recovered and applied—The said
damages not to exceed 20l. for one offence—
————— 831

The inhabitants to be rateably taxed, as in Hue and Cry by 27 Eliz. cap. 13.—On conviction of one or more offenders in twelve months, the hundred or inhabitants to be repaid out of the tolls—Actions commenced by a clerk of the peace not to be discontinued on his death — 832

No action for recovering damages, unless information made within six days, and the suit commenced in six months after the offence — 833

Robbery.

What is or amounts to a robbery in respect of the manner, or person from whom any thing is taken — 834, 836

Stat. 3 Ed. 1, c. 9. All men shall be ready to pursue felons — 837

Stat. 13 Ed. 1, st. 2, c. 1. Fresh suit shall be made after felons and robbers from town to town, &c. — ib.

Stat. 13 Ed. 1, c. 2. The county shall answer for robbers and felons, if they be not apprehended — 838

Stat. 28 Ed. 3, c. 11. The penalty of the country, if robbers offending therein be not taken within forty days — 839

Stat. 27 Eliz. c. 13. Hue and Cry, how and by whom to be made, and the penalty for default thereof, &c.—The effects of statutes touching answering for robbery—Several inconveniencies ensuing the aforesaid statutes touching Hue and Cry — 839

The inhabitants of the hundred where fresh suit shall not be made, shall answer half damages—The moiety shall be recovered by the clerk of the peace—The death or removing of the clerk of the peace shall not cease the suit — 840

A remedy for those against whom recovery and execution is had, to have contribution—The taxation of the towns by the justices—The taxation of the inhabitants by the constables—Distraint, and sale of distresses for default of payment—The constables shall deliver the money collected, to the justices — 841

Levying of the contribution in the hundred where default of pursuit shall be—No penalty where any of the offenders be apprehended—The suit shall be commenced within one year after the robbery.—In what sort Hue and Cry, and pursuit of the felons shall be made—The party robbed shall give notice thereof to the inhabitants of the same town, &c.—The party robbed examined before a justice, whether he knew any of the offenders — 842

Stat. 4 Will. & M. c. 8. Reward to him that shall take an highwayman — 843

Executors, &c. of persons killed shall have the reward—Sheriffs shall be allowed it in their

accounts—Sheriff not having sufficient to be repaid by the treasury—Highwayman's horse, &c. given to the apprehender — 844

Stat. 6 Geo. 1, c. 23. The streets of London, Westminster, &c. shall be deemed highways within the 4 & 5 W. & M. c. 8. And all certificates upon conviction for robbery shall be paid without fee; except 5s. for writing, and persons taking more shall forfeit 40l. — 845

Stat. 8 Geo. 2, c. 16. No person to sue the hundred in case of robbery, without first giving notice to a constable, &c. describing the felon and publishing the case in the L. Gazette, within twenty days after the robbery, and giving security of 100l. to the high constable, to pay costs, if cast — 846

The sheriff to certify such bond, and the certificate thereof to be delivered to the chief clerk, &c. before process granted—The fees—The bond to be delivered gratis to the high constable—Hundred not chargeable, if one of the felons be apprehended in forty days after notice in the Gazette—High constable only to be served with the process, who is to give public notice thereof on the next market day, or in the parish church, and shall enter appearance; if the plaintiff recover, the sheriff to shew the writ of execution to two justices, who are to tax and levy the charge as by stat. 27 Eliz.—The money to be paid in ten days after collection, to the sheriff, for the use of the plaintiff, &c.—The money to be paid without fee — 847-8

Sheriff not obliged to make a return to the writ, till sixty days after delivery—How the high constable shall be reimbursed if the plaintiff be nonsuited, &c. — 849

Money levied for reimbursing the high constable to be paid within ten days—10l. Reward for apprehending a felon, so as to indemnify the hundred—How the assessments are to be made—Penalty on collectors not doing their duty — 850

Method of pursuing Hue and Cry—5l. Penalty on refusal or neglect—Penalties how to be levied — 852

Stat. 22 Geo. 2, c. 24. No person to recover in any action on the statutes of Hue and Cry more than 200l. unless at the time of the robbery there be two present to attest the truth thereof — 852

Rout. See *Riot*.

Rum. See *Excise*.

Run Goods. See *Excise*.

Sabbath. See *Lord's Day*.

Sail-Cloth.

Stat. 4 G. 2, c. 27. Manufacturer to affix his name and place of abode—Penalty 5l.—Maliciously

ously cutting off such mark forfeits 10l. 853
 Stat. 9 Geo. 2, c. 37. Makers of British sail-
 cloth to stamp their names and places of
 abode on every piece, on penalty of 10l. for
 each piece—5l. Penalty on wilfully obliterat-
 ing the stamp, or affixing another person's
 stamp ————— 854

Sacraments. See *Public Worship*.

Sacrilege. See *Burglary, Larceny*.

Salmon. See *Game*.

Salt. See *Excise*.

Sanctuary.

Stat. 21 Jac. 1, c. 28. All sanctuaries taken
 away ————— 854

Scabengers.

Two acts relating to them repealed 855

Schoolmasters.

When guilty of murder, &c. ————— ib.

Seamen.

Stat. 1 Geo. 1, ft. 2, c. 25. Treasurer, &c. of
 the navy impowered to punish persons who
 make disturbances in the yards, &c. 856

And may bind the offenders to good behaviour,
 and to appear at the assizes, &c. ————— 857

Stat. 2 Geo. 2, c. 36. No masters of ships to
 proceed on a voyage without agreeing with
 the mariners for wages, apprentices excepted,
 on forfeiture of 5l for each mariner—Marin-
 ers to sign the agreement—Penalty on ma-
 riners deserting ————— 858

Justices of the peace may commit deserters to
 the house of correction—Penalty on mariners
 absenting from the ship without leave—Pe-
 nalty for leaving the ship before discharged—
 Masters to pay mariners wages in thirty days
 after coming home ————— 859

In case of suit for wages, master obliged to pro-
 duce the agreement—Masters to deduct out
 of seamen's wages all penalties due to Green-
 wich hospital—Forfeitures to be paid to the
 hospital within three months 860

Stat. 31 Geo. 2, c. 19. Penalty of personating
 an officer, or seaman, supposed to have wages
 due to him, or his executor, relation, or cre-
 ditor, or of forging letters of attorney, tickets,
 certificates, or wills; or of making false oath
 to obtain probate of any will, in order to re-
 ceive the wages, &c. of such person, is death
 861-2

Stat. 2 Geo. 3, c. 31. All the provisions, pen-
 alties, matters, and things, in the said act of
 2 Geo. II. are extended to his majesty's co-
 lonies in America, and the forfeitures appli-

cable to Greenwich hospital are to be paid
 there to the officer constituted by the admi-
 ralty: and masters of ships, deducting any of
 the said forfeitures out of the seamen's wages,
 and not duly paying over the same, forfeit
 treble the value to the use of the said hospital
 863

Servants (to Clothiers.)

Stat. 4 Ed. 4, c. 1. A clothier shall pay to his
 work folks ready money, and shall deliver
 them wool according to the weight ib.

Every worker of wool shall do his duty therein
 lawfully—The fuller's duty in his occupa-
 tion—What magistrates may enquire of and
 punish such as do offend—What process shall
 be awarded by justices of peace against offen-
 ders ————— 864

Stat. 7 Jac. 1, c. 7. The penalty of a worker of
 wool or yarn that doth imbezil or detain any
 part thereof—The punishment of the receiver
 or buyer of imbezilled yarn—Spinners of
 wool in certain towns in Essex 866

Stat. 10 Ann. c. 16. Clothiers, &c. shall pay
 their workmen in money—Penalty 20s. of-
 fences against this act to be determined by
 justices ————— 866

Forfeitures, one half to the informer, the other
 to the poor—Neglecting to pay in fourteen
 days, may be levied by distress and sale. If
 no distress, committed to the house of cor-
 rection for three months—Prosecution in
 thirty days—Persons aggrieved may appeal to
 quarter sessions ————— 867

Stat. 1 Geo. 1, ft. 2, c. 15. Offences to be de-
 termined by justices of the peace ib.

How the forfeitures shall be disposed—To be
 levied by distress, in case of refusal to pay—
 Prosecution in forty days—Persons aggrieved by
 the justices order may appeal to the sessions,
 whose determination shall be final; and they
 shall allow costs to the party aggrieved—
 Clothiers, &c. to pay their workmen in
 money, on forfeiture of 40s. ————— 868

Stat. 12 Geo. 1, c. 34. Breaking into a shop to
 cut any ferges, &c. felony ————— 869

Stat. 13 Geo. 1, c. 23. The length of warping
 bars and thrums to be used in mixed medley
 or white cloth ————— ib.

All wool, &c. to be given out by weight, at 16
 oz. to the lb.—Prosecutions how to be heard
 How disputes relating to wages or damages
 shall be heard—Appeal to the quarter ses-
 sions, &c. ————— 870

Justices on information of all practices, may
 issue warrants to search—Makers to pay the
 weavers according to the yards that the
 chains are laid on the warping bars 871

Stat. 29 Geo. 2, c. 33. Masters paying work-
 men in any other manner than in money,
 7 A 2 forfeit

forfeit 20l. ———— ib.
 Penalties and forfeitures, how to be recovered and applied—For want of distress offender to be committed—Application of penalties upon conviction before the justices—None may be sued both ways for the same offence—Persons aggrieved by order of justices may appeal to next quarter sessions, entering into recognizance, and giving eight days notice—Order of justices to be binding ———— 872
 Proceedings not to be removed by certiorari ———— 873
 Stat. 30 Geo. 2, c. 12. Clothier not paying wages within two days after delivery of the work, to forfeit 40s. ———— ib.

Servants (to Hatters.)

Stat. 22 Geo. 2, c. 26. Persons employed in the manufactures described, being convicted of imbezilling, &c. any of the materials, or of reeling false or short yarn, to be committed, and publicly whipped.—Penalty of a subsequent offence ———— 877
 Persons convicted of buying or receiving materials from workmen, to forfeit for the first offence 20l. and on non-payment to be committed, and whipped; and in case of subsequent offence, to forfeit 40l. &c. ———— 878
 Appeal given to persons convicted of buying materials—The appellant giving security, &c. ———— 879
 Justices empowered to grant a warrant to search the houses, &c. of persons convicted of purloining, &c.—Justice to give notice to the convict, of the materials brought to him, in order to prove his property, &c. ———— 880
 Persons aggrieved may appeal—Notice of appeal to be given—Penalty on workmen not returning the remains of the materials, within twenty-one days ———— 881
 Justice to issue his warrant upon complaint of any offence against this act—Journeyman not completing their work, &c. ———— 882
 Stat. 23 Geo. 2, c. 13. A term of conviction on the recited act ———— 883
 Not liable to be removed by *certiorari*; and transmitted to the sessions—Justice to hear appeals ———— 884

Servants (to Husbandry.)

Stat. 5 Eliz. c. 4. No person shall retain a servant in these sciences, under one whole year. No person shall put away his servant, nor shall any servant depart from his master, before the end of his time ———— 884
 The cause of putting away servants, or their departing, to be determined by a justice of peace, mayor, bailiff, &c.—No servant shall depart or be put away, but upon a quarter's

warning—What sort of persons are compellable to serve by the year in husbandry—The forfeiture for putting away his servant within his term, or at the end of his term without warning ———— 885
 The punishment of a servant which performeth not his duty in service or departure—Women compellable to serve, that be above twelve and under forty years old, unmarried, and forth of service ———— 186-7
 Who shall have the forfeitures mentioned in this statute—Justices of peace, mayor, &c. may hear and determine all offences committed against this statute—Who shall have the forfeiture in cities and towns corporate ib.
 Stat. 20 Geo. 2, c. 19. Differences between masters and certain servants, to be determined by a justice of peace where the master resides—Justices to examine servants, &c. upon oath, and make order for payment of wages due, if under a certain sum—On nonpayment, to be levied by distress and sale—Justices to hear masters complaints on oath; and to punish the offender by commitment, abatement of wages, or dismissal—Justices to hear servant's complaints on oath, and to summon the master, &c.—and upon satisfactory proof, to discharge the servant ———— 883-9

Servants (to Leathern Manufactures.)

Stat. 13 Geo. c. c. 8. Workers in leather to pay double the damage of imbezilment—One half to the sufferer, the other to the poor of the parish; to be levied on offender's goods; or sent to the house of correction for a fortnight, and there whipped; and for any subsequent offence to forfeit four times the value, or sent to the house of correction, not exceeding three months, or less than one; and be publicly whipped—Receivers subject to the same penalties ———— 891
 Workmen to be paid their wages in money; but to suffer double damages if found guilty of neglect, &c.—Complaints to be heard and determined by two justices—Journeyman to perform the business engaged in, or be sent to the house of correction for a month—Persons aggrieved may appeal to general quarter sessions; giving eight days notice ———— 892-3
 Stat. 9 Geo. 1, c. 27. On due proof of journeyman's purloining boots, &c. a justice may convict him, and may award satisfaction for damage sustained, which may be levied by distress ———— 894
 Confederates liable to same punishment—Justices may issue warrants, &c. to search for leather, &c. purloined; and may cause pawned goods to be restored to owners ———— 895
 Persons

I N D E X.

Persons retained by a new master before the work delivered by a former is done, shall be sent to the house of correction—Persons aggrieved may appeal to the sessions 896

Servants (to Silk-masters.)

Stat. 13 & 14 Car. 2, c. 15. None shall use the trade of a silkthrower, but such as have served as apprentices seven years—The penalty—Before whom to be recovered—The punishment of silkwinders that imbezil goods delivered to them 896-7

Stat. 20 Car. 2, c. 6. Silk-winders or doubblers offending, to be committed to prison 898

Stat. 8 & 9 Wil. 3, c. 36. Persons imbezelling, &c. any silk delivered to be wrought up, and also buyers, receivers, &c. to be liable to the penalties in the act 13 and 14 Car. 2, c. 15, & 20 Car. 2, c. 6. ib.

(Servants (to Taylors.)

Stat. 7 Geo. 1, c. 13. For regulating the journeymen taylors within the weekly bills of mortality 899, 902

Servants (to Woollen Manufactures.)

Stat. 1 Ann. st. 2, c. 18. Penalty on persons employed in the woollen or linen manufactures, &c. and imbezelling the same—The like on persons buying, &c. such goods imbezelled—Labourers and workmen to be paid in money—All wool to be wrought shall be delivered out by weight 903

How wages, frauds, &c. of labourers may be heard and determined—Party aggrieved may appeal 904

Sessions.

Sessions, what, &c. 904

Stat. 2 Hen. 5, c. 4. What justices of peace and quorum must be resident in the same shire, what not—At what times justices of the peace shall hold their quarter sessions 905

Stat. 14 Hen. 6, c. 4. The justices of the peace of Middlesex shall keep their sessions but twice in the year ib.

Sewers.

Sewer, what 906

Stat. 13 Eliz. c. 9. The commissioners of sewers orders shall continue, though the commission do expire—The justices of peace may for one year execute the commission of sewers unless a new commission be granted 907

Sheep.

Stat. 25 Hen. 8, c. 13. Concerning the number of sheep one should keep 908

Stat. 8 Eliz. c. 3. Penalty for conveying of any sheep alive out of his realm i.

The second offence felony—No corruption of blood, or forfeiture of dower—What justices may hear and determine the offences aforesaid 909

Stat. 12 Car 2, c. 32. No person shall export any sheep or wool, wool-sells, mortlings, yarn, wool-flocks, fuller's-earth, fulling-clay, nor carry, load, or board any sheep, wool, &c. 910

Ships.

Stat. 12 Ann. st. 2, c. 18. Making holes in the ship, &c. felony 911

Stat. 11 Geo. 1, c. 29. Wilfully destroying ships, death ib.

Shoemakers. See *Leather, Servants.*

Silks.

Stat. 9 & 10 Wil. 3, c. 43. No foreign silks shall be imported 912

Stat. 3 Geo. 3, c. 21. Foreign silks, ribbands, laces, or girdles, imported are forfeitable, and may be seized by any person; and the importer forfeits also 100l. and all persons assisting therein, 50l. each: and the venders, retailers, and persons concealing the same, forfeit, besides the loss of the goods, 50l. One moiety of the said penalties to go to the king, and the other to the prosecutor, to be recovered in any of the courts at Westminster 914

Where the value of the goods so seized out of London and Westminster, do not exceed 20l. two justices may proceed to condemnation, or discharge thereof—After condemnation the goods to be burnt, suspending the execution thereof only till prosecution of the penalties—The goods after seizure, to be deposited, till condemnation or discharge, in the king's ware-houses, if the seizure be made within the bills of mortality; if elsewhere, then in the hand of the chief magistrate, or constable; and to be free to inspection, with leave of court, &c. 915

Upon information given in upon oath before a justice, search warrants may be granted; and seizure made of such goods as shall thereupon be found 916

In doubts with respect to the place where the goods were manufactured, the *onus probandi* to lie on the person in whose custody they are found—Persons in whose custody such goods shall be seized (not importing or concealing the same) discovering the vender, are discharged from the penalty themselves—The wearers of such ribbands, laces, or girdles, are exempted from all forfeiture and penalty 917

Stat. 5 Geo. 3, c. 48. Foreign manufactured silk stockings, silk mits, or silk gloves, are prohibited to be imported after the 24th of June, 1765, on penalty of forfeiture, and the persons assisting therein, or dealers in whose custody such goods shall be found or exposing them to sale, &c. forfeit also 200l.—Where such goods shall be found, and seized out of London, or weekly bills not exceeding 20l. in value; two justices for the county or place may proceed to condemnation or discharge thereof 918

Seizures if made within London or Westminster, or weekly bills, to be deposited in the king's warehouses; if made elsewhere, to be deposited with the chief magistrate, or constable, and to be viewed with leave; and after condemnation to be publickly sold for exportation to foreign parts, not being any of his majesty's dominions; for which security is to be given, to be discharged upon certificate of the due landing thereof, or proof made of their being taken by the enemy, or that they perished at sea 919

Where there shall be grounds for suspicion, and information upon oath be made and subscribed before a justice, of any such goods being imported and concealed by the retailer, he is to issue his warrant for searching for and seizing the same—Defendant allowed to pay money into court 920

If any doubt arise with respect to the place of manufacture of such goods, proof to lie on the defendant—Person in whose custody the goods shall be found, not importing or concealing the same, discovering the seller, is discharged from all penalties—Recovery and application of the pecuniary penalties and forfeitures—Wearer of such goods not subject to any forfeiture or penalty—Penalties inflicted by act 19 Hen. 7, on persons importing ribbands, laces, or girdles, of foreign manufacture, and upon the aiders therein, and the venders, or concealers thereof, deemed insufficient, and persons for the future guilty of any of the said offences, to forfeit 200l. with costs of suit; one moiety to the king, and the other to the prosecutor; but the wearer is not to be subject to any forfeiture or penalty 920-22

Such ribbands, laces, and girdles, instead of being burnt, pursuant to the recited act, are to be publickly sold, and exported to foreign parts, not being part of the king's dominions; for which security is to be given, and a certificate returned of the due landing thereof accordingly, or proof made of their being taken by the enemies, or of their perishing in the sea—Officer neglecting, for one month after condemnation, to sue for the penalties, any other person may sue for, and recover the same, &c. 923

Skins. See *Leather*.

Slander.

Slander, what, &c. 923
Stat. 3 Ed. 1, c. 34. None shall report slanderous news, whereby discord may arise 924
Stat. 2 Ric. 2, c. 5. The penalty for telling slanderous lyes of the great men of the realm 925
Stat. 12 Ric. 2, c. 11. The punishment of him that telleth lyes of the peers or great officers of the realm ib.

Smuglers. See *Excise*.

Snares. See *Game*.

Snuff. See *Tobacco*.

Soap. See *Excise*.

Sodomy. See *Buggery*.

Soldiers.

Ancient method of raising soldiers 926

Stamps.

Stamps what, and statutes concerning them ib.
Stat. 10 Ann. c. 19. Justices may determine pecuniary forfeitures, not exceeding 20l.—Party aggrieved may appeal to quarter-sessions—Justices may mitigate penalties—No writs of certiorari 927

The clauses and sums particularly relating to each instrument charged with stamp duties, reduced to an alphabetical method 928-36

Clauses concerning the officers for the management of the stamp duties 936

General clauses relating to and enforcing the payment of stamp duties 937

Clauses for the security of those who advanced money to the credit of the stamp duties 938

Star. See *Bent*.

Starch. See *Excise*.

Stock of the county. See *County Rate*.

Stock (of Companies.)

Stat. 8 Geo. 2, c. 22. Forging or counterfeiting names of proprietors, &c. or falsely personating real proprietors of shares, &c. felony 939

Stocks.

Who obliged to keep stocks, &c. ib.

Stolen Goods. See *Restitution*.

Stores.

Imbezelling the queen's ordnance, armour or victuals, to the value of twenty shillings, provided for soldiers, shall be felony—Within what time the offender shall be impeached—No corruption of blood, nor forfeiture of the inheritance of lands or dower for this felony—The defendant may bring proof of his discharge 940

Stat.

I N D E X.

Stat. 9 & 10 Wil. 3, c. 14. No warlike or naval stores, except for the king's use, shall be made with the king's marks, &c.—Penalty—Penalty on the person in whose custody such marked stores are found, &c.—Unless he produce a certificate, &c. ————— 941

Stat. 9 Geo. 1, c. 8. For the preservation of naval stores, and stores of war ————— 942

Stat. 17 Geo. 2, c. 40. Justices of assize, or quarter sessions, may try offences, relating to the stores, &c. ————— 943

Stray. See *Estray*.

Subornation. See *Perjury*.

Sunday. See *Lord's Day*.

Surety of the Peace

What, &c. ————— 944

Of granting surety of the peace, by a justice of the peace ————— 945-47

Of forfeiting a recognizance for keeping the peace, and how such recognizance may be discharged ————— 947-50

Surety of the good Behaviour.

What it is ————— 950

In what cases, in what manner, and how long, a person may be compelled to find surety for his good behaviour ————— 951-54

When such surety is discharged or superseded; of breach thereof, and of pleadings, and proceedings therein ————— 954-55

Surgeons. See *physicians*:

Swearing.

Stat. 19 Geo. 2, c. 21. The penalty of profane cursing and swearing—Profane swearers in the hearing of any justice, &c. to be convicted without other proof—Constables, &c. to seize persons profanely swearing, if unknown, and bring them before the next justice, &c. who is to convict them on the officer's oath; and if they are known, information to be made—Justices, &c. upon information, to order the offender to appear, &c.—Penalty to be paid, or security given, or the offender to be committed for ten days to the house of correction—Common soldiers and sailors, not paying the penalty, &c. — 957

Justices, &c. not doing their duty, forfeit 5l.—Constables, &c. not doing their duty, forfeit 40s. and for want of distress, to be committed for one month to the house of correction—Form of conviction, to be wrote on parchment, and returned to the next sessions—Justices, &c. to put this act in execution indiscriminately—Penalties how to be disposed of—Offenders to pay all charges over and above the penalties, or be committed to the house of correction for six days extraordinary ————— 958-59

Proof, &c. to be made within eight days—Act to be read quarterly in all churches, &c.—Penalty of 5 l. for neglect—Fee of 1s. to the justices, &c. clerk ————— 960

Tanners. See *Leather*.

Tailors. See *Buttons*.

————— *Servants*.

Tea. See *Excise*.

Tenant. See *Distress*.

Tin. See *Pewter*.

Tithes.

Statutes concerning it ————— 961

Tithes.

Stat. 27 Hen. 8, c. 20. Tithes shall be paid according to the custom of the parish where they be due—The offender in subtracting of tithes shall be convened before the ordinary—The offender shall be bound by two justices of peace, &c. to obey the ordinary's sentence—This act shall not extend to the citizens of London—Every person shall have his demand and defence according to the laws ecclesiastical — 961-62

Stat. 32 Hen. 8, c. 7. Tithes shall be paid according to the custom of the parish where they be due—The offenders shall be bound by two justices of the peace to obey the ordinary's sentence ————— 964

Stat. 7 & 8 Will. 3, c. 6. Small tithes not paid in twenty days after demand, lawful to complain to two justices not interested, who may summon the persons complained of, and on default of appearance determine the complaint, and give allowance, with costs not exceeding 10s.—On refusal to pay in ten days after notice, the constables, &c. may distrain, and after three days sell the same, and satisfy the sum and charges, rendering the overplus ————— 965

Justices to administer an oath—Not to extend to London, nor any place otherwise settled by parliament—No complaint to be heard, unless made within two years—Persons aggrieved to appeal to the sessions, who are to determine the matter—If judgment be confirmed, justices to give costs—No judgment to be removed, unless the title be in question—Persons complained of, insisting on any composition, &c. and giving security to pay costs, justices not to give judgment — 966

And complainant may prosecute in any other court—Judgment to be inrolled at the next sessions by the clerk of the peace, and to bar vicars from any other remedy—Persons removing, justices may certify the judgment, and other justices by warrant may levy the same adjudged — 967
If the plaintiff be nonsuit, person sued to have double costs—Suits for tithes not exceeding 40 s.

40 s. to have no benefit by this act — 968
 Stat. 1 Geo. 1, st. 2, c. 6, made for explaining
 the preceding act — 968

Tobacco.

Stat. 12 Car. 2, c. 34. Importance of the planta-
 tions of America ————— 969
 All sheriffs and other officers may destroy any to-
 bacco planted contrary to this act—The pe-
 nalty of any person resisting this act—Proviso
 for private gardens ————— 970
 Stat. 15 Car. 2, c. 7. The further penalty for
 planting tobacco in England ————— ib.
 Stat. 22 & 23 Car. 2, c. 26. Justices of the peace
 are to command all constables, &c. to make a re-
 turn to them of what tobacco is planted, and
 upon whose land—Which presentment being
 filed, shall be a sufficient conviction—Except
 upon notice, it shall be traversed—Power given
 to all officers, &c. to pull up and destroy all
 the plants, &c. ————— 972
 The penalty of officers not doing their duty in de-
 stroying of it—The penalty for refusing to assist
 the officers—The forfeiture for resisting the of-
 ficers—The officer, to any action brought against
 him, may plead not guilty—If judgment pass for
 him, he shall recover double costs—A saving for
 tobacco planted in the physic gardens — 973-4
 Stat. 1 Geo. 1, c. 46. Walnut-tree leaves, &c.
 shall not be cut with tobacco—Penalty of 5 s.
 for every pound offered to sale, to king and pro-
 secutor ————— 974
 Like penalty for exportation—Such leaves, &c.
 may be searched for and seized—Search to be
 made at seasonable hours, and not without war-
 rant from two justices—The leaves, &c. seized
 to be brought to the custom-house, or secured by
 order of the justices—The cause of seizure to be
 determined by quarter-sessions: and leaves, &c.
 to be burnt—Punishment of servants, &c. em-
 ployed in cutting or selling such leaves—Persons
 sued may plead the general issue, and shall re-
 cover treble costs—Mixing or colouring snuff
 with oaker, &c. forfeits the snuff, and 3 l. for
 every pound weight; by 5 Geo. 1, c. 11, sect. 22,
 this act is extended to other abuses relating to
 snuff—How to be recovered and disposed - 975-6
 Stat. 5 Geo. 1, c. 11. All the clauses in the act 1
 Geo. 1, relating to snuff, to extend to oakers,
 umber, or other colouring, sullick, &c. mixt
 with snuff ————— 977
 Stat. 24 Geo. 2, c. 41. No tobacco, stalks or
 snuff, above a certain weight, carried coastwise,
 to be afterwards removed by land, without a
 certificate of the duties being paid—Officers to
 grant such certificate, and to transmit a dupli-
 cate to the officer appointed by the treasury - ib.
 Proprietor to insert on the back of the certificate,
 the packages, &c. and make oath thereof—Pe-

nalty of removing tobacco without certificate,
 &c. and of counterfeiting thereof — 978
 Toll. See *Miller*.
 Trades. See *Apprentices*.

Transportation.

Stat. 6 Geo. 1, c. 23. All the powers given by 4
 Geo. 1, c. 11, to any court by whom any felons
 convicted may be transported, may be executed by
 any subsequent court, held for the same county,
 &c. though at another place—Such court may
 appoint two justices of the county, &c. to con-
 tract with any persons for the transportation of
 such felons, and may order the like security, and
 cause the felons to be delivered to the persons
 contracting—The contracts to be certified to
 the next court—Charges about contracts, &c. to
 be borne by each county, &c. to be paid by the
 treasurer ————— 979
 Security for transportation to be in the name of the
 clerks of the peace, who shall prosecute in their
 own names: and monies recovered on such bonds
 shall be to the use of the county, &c.—Persons
 contracting for transportation may secure such
 felons as they shall think fit: and rescuing them,
 shall be guilty of felony—Felons ordered for
 transportation, being afterwards at large before
 the expiration of the term, shall suffer death—
 Where such offenders may be tried, and what
 shall be a sufficient proof to convict them — 980
 Stat. 16 Geo. 2, c. 15. Convicts not transporting
 themselves, or returning before their time, to
 suffer death—Manner of trying convicts re-
 turned from transportation—Reward on con-
 viction of offenders ————— 981-2

Treason.

Stat. 25 Ed. 3, c. 2. The king shall have the for-
 feiture of all the offenders lands in high treason
 —Petit treason—New questions of treason shall
 first be decided in parliament ————— 982
 Stat. 1 Ma. st. 1, c. 1. The state of a king standeth
 more assuredly by the love of his subjects than in
 fear of laws ————— ib.
 No act or offence shall be treason, petty treason, or
 misprision, but such as be declared by the stat.
 of 25 Ed. 3, stat. 5, c. 2. ————— 984
 Stat. 1 Ed. 6, c. 12. No indictment or arraign-
 ment without two witnesses or confession — ib.
 Stat. 7 Will. 3, c. 3. Persons indicted for high-
 treason to have a copy of the indictment five
 days before trial, paying for the same, and to
 make their defence by counsel and witnesses on
 oath—Court authorized to assign counsel — 985
 No person to be tried for high treason, but on the
 oath of two witnesses—Persons indicted may
 be outlawed—But have benefit of this act—

One witness to one act of treason, and another to another, not to be deemed two witnesses—No person to be indicted for treason, unless within three years after offence—No prosecution, unless indicted within three years — 986
 Persons tried to have copies of the panel two days before trial—Process of the court to compel witnesses to appear—No evidence of acts not laid in the indictment—No indictment to be quashed for miswriting, &c. unless exception be made before evidence given—And not to stay judgment—Jury of twelve freeholders—Peers to be summoned twenty days before trial; and shall take the oaths, &c. — 987
 Act not to extend to any impeachment in parliament—Nor to counterfeit the coin, &c. --- 988
 Holding correspondence with the pretender, &c. ib.

Treasurer.

By whom to be appointed ——— 989
 Trees. See *Wood*.
 Trial. See *Jury, Sessions*.
 Trophy-money. See *Militia*.

Turnips.

Stat. 23 Geo. 2, c. 26. Penalty on persons stealing or destroying turnips growing in private grounds — 989

Turnpikes. See *Highways*.

Vagrants.

Stat. 17 Geo. 2, c. 5. Particular offences, and their punishments ——— 990
 Offence of a higher nature—Five shillings reward for apprehending offenders—Penalty on overseer not paying the reward—Other offences, and their punishments ——— 991
 Incorrigible rogues—Any person may apprehend offenders—Penalty on officers neglecting their duty ——— 992
 Reward for taking up vagabonds, &c.—Penalty on not paying the reward—General privy searches to be made ——— 993
 Justices to punish vagabonds, &c. taken up at privy searches—Different sorts of vagabonds, how to be passed—Form of a pass ——— 994
 Duplicate of the pass and examination to be filed at the next general or quarter sessions—Power of justices over vagabonds and incorrigible rogues — 995
 Justices to regulate the passes, by giving the officers certificates—Form of the certificate — 996
 The duty of officers with such pass and certificate—Persons shall pay for their own passage if they are found able ——— 997
 Regulations for passing vagrants into Scotland—
 Vol. III. No. CXI.

Regulations for passing vagrants into Ireland, &c. ——— 998

Penalty on masters of ships refusing to take vagrants on board—Masters not obliged to take on board more than one vagrant for every twenty tons burthen—Justices to limit the rates per mile for passing vagrants, &c.—The high constable to pay the rates to petty constables, &c. for passing vagrants ——— 999

Penalty on the high constable's refusing to pay, as directed by the justice's warrant—Penalty on counterfeiting or altering certificates, receipts, or notes—Penalty on the officer not passing according to order; and on the officer's not receiving the pass—Manner of levying the penalty—Vagabonds, &c. to be set to work - 1000

Penalty on officers not doing their duty; and on persons hindering the execution of this act, or rescuing a prisoner—To be levied by distress and sale, &c.—Penalty for sheltering vagabonds ——— 1001

Beggars with children how to be ordered—How to order women delivered of children in the street ——— 1002

Persons aggrieved may appeal to the next general or quarter-sessions—This act not to alter the manner of passing vagrants, as settled by special acts—How to order vagrants whose settlements cannot be found—Proviso for heirs or assigns of John Dutton ——— 1003

Vellum. See *Stamps*.

Verdict. See *Jury*

Verjuice. See *Excise*.

Victuallers. See *Almshouses*.

Vinegar. See *Excise*.

Unlawful Assembly. See *Riot*.

Umpire. See *Arvand*.

Warrant. See *Arrest*.

Watch.

Stat. 13 Ed. 1, c. 4. At what time great towns shall be opened and shut—At what time the night-watch shall begin and end—How they shall be used who disobey arrests — 1004
 Stat. 5 Hen. 4, c. 3. Watches shall be made upon the coasts as they were wont to be — ib.

Weights and Measures.

Stat. 3 Hen. 6, c. 5. Every city and borough shall have a common balance and weight — 1005
 Stat. 11 Hen. 7, c. 4. The names of the cities and towns limited for the keeping of weights and measures ——— ib.
 Stat. 16 Car. 1, c. 19. For the reformation of false weights and measures ——— ib.

Witchcraft.

Stat. 9 Geo. 2, c. 5. Stat. 1 James 1, cap. 12, repealed—No person to be prosecuted for witchcraft, &c.—Persons pretending to exercise witchcraft, tell fortunes, or by crafty science to discover stolen goods, to be imprisoned for a year, be pilloried and bound for good behaviour—1007

Witnesses. See *Evidence*.

Women.

Felony to carry a woman away against her will, that hath lands or goods, or is heir apparent to her ancestor ————— 1008

Stat. 4 & 5 Phil. & Ma. c. 8. Punishment of such as take away maidens, &c. within sixteen years of age, &c. ————— ib.

The penalty for taking a maid under sixteen years of age—The penalty for taking away, deflowering or contracting matrimony with a woman under sixteen years of age ————— 1009

Who may hear and determine the offences aforesaid—The forfeiture of a woman consenting to an unlawful contract—Orders for orphans—1010

Wood.

Stat. 13 Ed. 1, c. 46. A ditch or hedge of ground approved cast down ————— 1011

Stat. 15 Car. 2, c. 2. The punishment for cutting and spoiling any woods ————— 1012

Who may apprehend wood stealers ————— ib.

Search in houses of suspected persons—The punishment for the first offence ————— 1013

The second offence—Buyers of stolen wood, how to be dealt withal—Within what time offenders must be questioned within this act ————— 1014

Stat. 29 Geo. 2, c. 36. Proprietors of wastes, &c. and persons having a right of common, may by consent inclose any part thereof, for planting and preserving timber or underwood—If any recompence be agreed to be given to the tenant; in what manner, the same is to be made, and applied ————— 1016

If lords and tenants join in assigning their rights of inclosure to any other persons, how recompence is to be made to the lord, if he have not the fee-simple therein, or be disabled to alien—Parish willing to purchase such right for the employment of their poor, recompence and other charges, to be paid out of the poor's rate, and the profits to be applied in aid thereof—Agreements to be signed and registered within three months—Persons aggrieved may appeal to the quarter-sessions ————— 1017

In case there be no appeal, agreement to stand good—Bodies politic, guardians and trustees, empowered to agree to such inclosure—If any

trees growing within such inclosures shall be unlawfully cut or destroyed, damages to be made good by the adjoining parishes; unless the offender be convicted within six months—Offences to be determined by two justices, or at the sessions—Penalty on conviction, the same as by 6 Geo. 1, c. 16. ————— 1018

And persons unlawfully cutting or destroying trees, on commonable grounds, to be in like manner convicted and punished—Doubt arising on 9 Geo. 1, c. 22, s. 7, obviated; and remedy for damages mentioned in the said clause, may be taken according to the acts of 1 Geo. 1, c. 8; & 6 Geo. 1, c. 16 ————— 1017

Stat. 31 Geo. 2, c. 41. The recompence to be made under the recited act in respect of the rights of common pasture in grounds to be inclosed for planting trees, is to be paid to the persons respectively interested therein, and not to the overseers of the poor ————— 1019

Tenants for life, or for terms of years determinable thereupon, may execute the powers given by the recited and this act, during their respective interests—But no act of theirs is to have effect, after the determination of such their estate ————— ib.

Stat. 4 Geo. 3, c. 31. Officers and keepers of woods and chases, &c. may seize any saw or other instrument used in unlawfully cutting any trees, &c. therein ————— ib.

Woollen Manufacture.

Stat. 11 Ed. 3, c. 3, &c. Importation of cloth—Exportation of cloth not fulled—Exportation of cloth not dressed—Winding of wool—Overseers of cloth—Overseers to search, &c. ————— 1020

Stat. 12 Car. 2, c. 32. Exportation of wool, &c. prohibited—Penalties—Offenders may be tried where apprehended—Any person may sue—Ships of aliens forfeited—Exceptions ————— 1020-21

Stat. 13 & 14 Car. 2, c. 18. Pressing wool, &c. prohibited—Wool, &c. not to be carried in the night—Who shall inquire of offences—Foreign wool cards, &c. not to be imported—For burying in woollen ————— 1023

Registers and affidavits of burials ————— 1024

Overseers to give account—Wool that is removed to be entered and registered—Persons discovering exempted ————— 1025

Regiller of wool—Woollen manufactures may be exported—Quantity of wool to be carried to Jersey, &c.—Ports of import from Ireland—Wool not to be carried in the night, nor exported—Penalty on the hundred ————— 1026

Penalty for assisting to export—Trial in any county—No composition with the hundred—Ships to cruise ————— 1027

Fullers earth not to be exported—Wool in Kent and Sussex to be accounted for—Directions for buying and selling wool in Kent and Sussex—Wool not to be removed near the sea—Wool within fifteen miles of the sea—Distribution of

I N D E X.

penalties—Prosecution in three years—Wool, wool-fels, &c. not to be exported abroad from Ireland ————— 1028

Penalties—Any person may seize—Ships from Ireland to unlade in England—Regiller of wool, imported from Ireland ————— 1029

Wool, &c. exported from Ireland to be accounted for—Ports of export in Ireland, and import in England—Penalties—Offender tried when apprehended—Directions for importation from Ireland ————— 1030

Ships to cruize—Ships and goods seized to be sold and distributed—Penalties—Plantation wool not to be exported—Prosecution at Westminster ————— 1031

Stat 4 Geo. 1, c. 11. Judgment by default 1032

Stat 5. Geo. 1, c. 11. Woolfells, &c. carried coastwise ————— ib.

Stat. 13 Geo. 1, c. 24. Penalties of deceitful dying black ————— ib.

Marks—Of using logwood in dying blue 1033

Searchers—Recovery of penalties ————— 1034

Prosecution in forty days—Packing of wool 1035

Notice to the commissioners of the customs and bond to be given—How to be landed—None but officers to enter informations for seizures—Penalties for collusive seizures—Encouragement to offenders to discover—Information when prosecuted ————— 1036

Reward to informers—Penalty on offering to bribe an officer—Opposing officers felony 1037

Stat. 15 Geo. 2, c. 27. Stealing cloth upon the rack or tenters, &c. ————— 1037

Stat. 5 Geo. 3, c. 51. Justices to appoint searchers and measurers—When the searchers shall measure and seal ————— 1040

And what shall be paid for the same and how applied—Penalty on searchers neglect — 1041

Makers not to take cloths from the mills before they are measured and stamped—Cloths to be sealed before they are put upon the tenters—Justices to appoint inspectors of fulling mills ————— 1041

Who are to conform to the rules of the general quarter-sessions, and to take an oath—The oath —Supervisors to visit mills and tenter-grounds ————— 1043

How inspectors are to act if they find cloth falsely stamped—How inspectors shall be appointed in case of death, &c. ————— 1044

Inspectors to enter shops where they shall suspect any undue stamped or stretched cloths—Penalty on offenders—Proviso—Justices to make regulations—Where merchants suspect frauds, they may wet the cloths, and have them measured by the inspector ————— 1045

Penalty on conviction—Where false seals are found, the inspector is to fix new seals, which are to be the rule of payment for the cloths 1046

Treasurer to deduct money forfeited out of inspec-

tors salaries—Persons charged with frauds may examine the cloths in the merchant's hands, &c. —Clothiers to weave their names and places of abode in the heads of their cloths—Penalty on persons defacing or counterfeiting seals, &c. before cloth taken from the tenters — 1047

Payments for milling long cloths—Justices to settle disputes between clothiers and millers—Penalty on stretching or straining cloths—Owners of tenters to measure and mark the lengths of their tenters—Penalty on using cards made with wire or wire teeth—How offences shall be prosecuted, and forfeitures applied — 1048-9

Appeal to the quarter-sessions—Justices, &c. to transmit to the quarter-sessions accounts of convictions, &c. ————— 1050

This act shall extend to all woollen cloths, except such narrow cloths as are described in act 11 Geo. 2.—Application of money now in the hands of the treasurer of the west riding—When justices may increase or diminish the rates - 1051

Wreck.

Stat. 2 Ed. 1, c. 4. What shall be adjudged wreck of the sea, and what not ————— 1052

Stat. 26 Geo. 2, c. 19. Persons convicted of plundering ship-wrecked goods, &c. or of obstructing the escape of any person from a wreck, or of putting out false lights, to suffer death without clergy—Where goods of small value shall be stolen without any circumstances of cruelty, the offender may be indicted for petit larceny—Justices upon information of ship-wrecked goods being stolen, or concealed, to issue search warrants; and the persons in whose custody the goods shall be found, not giving a satisfactory account, to be committed for six months, or until payment of treble value—Goods offered to sale, suspected to be shipwrecked, to be stoped, and notice to be given to a justice; and the person offering the same not making out his property, the goods to be returned to the owner, and the offender to be committed for six months, or till payment of treble value ————— 1054

Persons who shall save, and carry any vessel or goods into port, &c. for the benefit of the owners, and give notice thereof, or who shall discover where such goods are concealed, intitled to the reward; and the quantum in case of disagreement is to be adjusted according to 12 Ann. st 2, c. 18.—Where any vessel or effects shall be stranded, public notice to be given for a meeting of the sheriff, justices and magistrates, &c. who are to aid in saving the vessel and goods, &c. and to adjust the salvage; 4s. a day allowed for their attendance—If the salvage be not paid, the officer of the customs may raise the same by a bill of sale of the vessel or cargo, which may be redeemed, upon payment of principal and interest —Where

I N D E X.

—Where oath shall be made of plunder or theft, or of breaking a ship, contrary to 12 Ann. st. 2, c. 18, and the examination shall be delivered to the clerk of the peace, he is to prosecute the offender; and the charges to be paid by the treasurer of the county.—Clerk of the peace neglecting to prosecute, forfeits 100l.—Officers for putting this and 12 Ann. st. 2, c. 18, in execution—Officers for putting this and 12 Ann. in execution within the liberty of the cinque-ports, &c. ————— 1056
 Person^s convicted of assaulting any magistrate or

officer, &c. in the salvage of any vessel or goods, to be transported for seven years—Justice in the absence of the sheriff may take a sufficient force to repress violence, &c.—Persons impowered to give orders, where any shall be assembled in case of a shipwreck, &c.—Persons acting contrary to orders forfeit 5 l.—Rights of the crown, &c. reserved ————— 1057
 Examination on oath to be taken of the ship's name, cargo and owners, &c. and a copy to be transmitted to the secretary of the admiralty, and published in the Gazette ————— 1057

F I N I S.

N. B. The Precedents intended to be added to this Work, are under Consideration, and will be published with all Convenient Speed, together with Tables of the Names of the Cases, Statutes, &c.



D 000 008 547 2

